



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADA HAOJUN DEVELOPMENT GROUP CO. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's lawyer and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the owner of the landlord company named in this application and that he had permission to speak on its behalf. The landlord confirmed that his lawyer had permission to speak on his and the landlord company's behalf. This hearing lasted approximately 81 minutes.

"Witness HT" testified on behalf of the tenants and "witness GG" testified on behalf of the landlord at this hearing. Both parties had equal opportunities to question both witnesses. The female tenant left the hearing for a two minute portion in order to call witness HT to inform him to call into the hearing. She confirmed that the male tenant could represent her in her absence and that the hearing could continue during this time.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's written evidence package.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and their witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

The tenants testified regarding the following facts. This tenancy began on February 8, 2014 with the former landlords, witness HT and his wife. A written tenancy agreement was signed by the tenants and witness HT's wife. The tenancy ended on June 2, 2018. Monthly rent of \$1,250.00 was payable on the first day of each month. A security deposit was paid to the former landlords and returned to the tenants.

The landlord stated that he purchased the rental unit from the former landlords on June 18, 2018, the completion date of the sale.

The tenants testified that they vacated the rental unit pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 23, 2018 ("2 Month Notice"). The notice has an effective move-out date of May 31, 2018. There is a notation on the notice that the tenants could vacate by June 4, 2018. The tenants confirmed that they received the notice personally on March 30, 2018.

The tenants seek compensation under section 51(2) of the Act for 12 months' rent compensation, totalling \$15,000.00. The tenants claimed that because the landlord has not used the rental unit for the stated purpose on the 2 Month Notice, they are entitled to compensation. A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the reason indicated on the notice is:

- *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the*

purchaser or a close family member intends in good faith to occupy the rental unit.

The tenants stated that the landlord did not use the rental unit for the purpose in the 2 Month Notice. They said that they saw online advertisements for re-rental and that the landlord confirmed at this hearing that he re-rented the property, rather than him or his close family members moving in.

The landlord stated that he did not provide a written notice to witness HT in order to move into the rental unit. He claimed that there were multiple purchasers interested in the rental unit and he thinks witness HT issued the 2 Month Notice to the tenants on behalf of another purchaser, not him. He explained that witness HT should not have given the tenants the 2 Month Notice for him to move in because he did not tell witness HT or ask him in writing to issue the notice for vacancy in order to move in. The landlord confirmed that he re-rented the unit to new tenants as of August 2018.

Witness GG testified that she was the realtor for the landlord during his purchase of the rental unit. She said that witness HT accepted a different purchase offer on March 20, 2018, as per the email provided by the landlord. She stated that the offer collapsed on March 23, 2018, as per the text message provided. She claimed that on March 26, 2018, the landlord made a second purchase offer to witness HT, as per the email provided, which was then accepted. She maintained that there was no discussion between herself and the landlord for the tenants to vacate so that he could personally move into the rental unit. She maintained that the landlord did not ask her to issue a written notice to witness HT for the landlord to move in. She explained that the landlord told her he wanted to buy the rental unit for investment purposes, not to live there. She claimed that there was discussion of one tenant staying in the other upper unit and that person was kept on by the landlord for another year. She explained that the landlord did not have a preference for purchasing empty units without tenants.

Witness HT testified that his wife was the former owner of the rental unit but he had permission to speak on her behalf at this hearing because he managed the property as a realtor and acted as one of the former landlords. He confirmed that he sold the rental unit to the landlord in March 2018. He said that on the contract of purchase and sale, which was provided, it states that the landlord wanted vacant possession. He stated that he did not receive anything in writing from the landlord for him to move in or for the tenants to vacate for this reason. He explained that he checked off the reason box in the 2 Month Notice, asking for vacant possession so the purchaser could move in, because he did not know what other box to check off. He said that there was no

renovation or repair to be done, so the only other option on the notice, was the sale of the property with the purchaser moving in.

Analysis

Subsection 49(5) of the *Act* states that a landlord may end a tenancy in respect of a rental unit where the landlord sells the unit, all of the conditions for sale have been satisfied, and the purchaser asks the landlord in writing to give notice to the tenants to end the tenancy so that the purchaser or a close family member can occupy the unit in good faith.

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to double the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I make the following findings, on a balance of probabilities, based on the testimony and written evidence of both parties and their witnesses. The tenants vacated the rental unit on June 2, 2018, pursuant to the 2 Month Notice. Witness HT said that he sold the rental unit and all conditions for the sale were satisfied. He stated that he issued the 2 Month Notice because he did not know what other box to check off in the notice. He testified that the purchaser landlord did not ask him to issue the notice to the tenants, in writing, in order to move in. Witness HT did not provide a written copy of any request from the purchaser landlord. This is a requirement of section 49(5) of the *Act*.

The landlord confirmed that he did not ask witness HT to issue a notice to the tenants to vacate so that he could move in. Witness GG confirmed that she was not asked by the landlord to issue any notices to witness HT for the landlord to move in.

On a balance of probabilities and for the reasons stated above, I dismiss the tenants' application for compensation of \$15,000.00 under section 51(2)(b), without leave to reapply.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 19, 2018

Residential Tenancy Branch