



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

On September 21, 2018, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenants and the Landlord attended the hearing. All parties provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package and evidence to each of the Landlords by registered mail on September 21, 2018 and the Landlord confirmed that these packages were received. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlords were served the Notice of Hearing packages and evidence.

They also advised that they served the Landlords additional evidence by hand on January 2, 2019. The Landlord confirmed receipt of this package as well. This evidence was served within the timing requirements in accordance with Rule 3.14 of the Rules of Procedure. As such, I am satisfied that the Landlords were sufficiently served with the Tenants’ evidence and this evidence was accepted and considered when rendering this decision.

The Landlord advised that they did not submit any evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on being served a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”)?

- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that tenancy started on June 15, 2014 and the tenancy ended when the Tenants vacated the premises on February 28, 2017. Rent was established at \$1,450.00 per month and was due on the first of each month. A security deposit of \$700.00 and a pet damage deposit of \$100.00 was also paid.

The Tenants submitted that their landlord sold the rental unit on November 5, 2016 and that the purchaser of the property advised their landlord to serve the Notice. The Tenants submitted into documentary evidence a signed "TENANT OCCUPIED PROPERTY – BUYERS[sic] NOTICE TO SELLER FOR VACANT POSSESSION" form that confirmed that their landlord sold the rental unit to the Landlord (purchaser) on November 5, 2016. Furthermore, this form stated that "I/we (or my spouse, my/our child/children, my/our parent(s) intend in good faith to occupy the residential premises I/we am/are purchasing under the Contract of Purchase and Sale dated Nov 5th, 2016. All subjects have been removed, and I/we hereby request that you as landlord give the tenant(s) of the premises a notice under the *Residential Tenancy Act*, ending the tenancy and requiring the tenant(s) to vacate the premises by 1:00 PM Feb 28th, 2017."

The Tenants stated that they then received the Notice on November 29, 2016 and the reason their landlord checked off on the Notice was because "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 landlord indicated on the Notice that the effective date of the Notice was February 28, 2017.

The Tenants submitted into documentary evidence a Land Title Search identifying the purchaser as the Landlords named in this Application. They stated that they gave up vacant possession of the rental unit and the Landlords did not move in or occupy the property. Rather, the Landlords demolished the rental unit instead. The Tenants provided photos showing the condition of the rental unit on March 3, 2017, showing that the property was demolished as of May 1, 2017, and showing that a new home was being constructed in its place.

The Tenants advised that the Landlord did not use the property for the stated purpose on the Notice. They are seeking compensation allowed in the amount equivalent to two months' rent **(\$2,900.00)** as they were served the Notice and the Landlord failed to use the rental unit for the stated purpose within six months after the effective date of the Notice.

The Landlord confirmed that they purchased the property on November 5, 2016 and that they signed the form asking the landlord to serve the Notice to the Tenants because all of the conditions of the sale had been satisfied and they wanted to occupy the rental unit. He stated that the Notice was not given in bad faith as they were planning on moving into the rental unit because this property was close to work for him and his family. However, after they received vacant possession of the rental unit, they inspected it and realized that the condition of it was in such a state of disrepair that it required too much work and money to occupy and renovate. Thus, they made the decision not to occupy the rental unit but to demolish it instead and build anew. He confirmed that they demolished the rental unit in May 2017 and that they moved into the property after the new home was constructed. He advised that he was not aware of the requirements of the *Act* and was given bad advice by his agents.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Tenants' claim for two-months' compensation owed to them as the Landlords did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on November 29, 2016 and Section 51 of the *Act* at the time the Notice was served reads in part as follows:

51 (2) *In addition to the amount payable under subsection (1), if*

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

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

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I also find it important to note that Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

When reviewing the totality of the evidence before me, at the time the Notice was served, the applicable *Act* states that once the Notice is served, the Tenants are entitled to the amount of two months' rent if the Landlords do not use the property for the stated purpose on the Notice. This provision is irrespective of whether the Notice was served in good faith as this requirement pertains to the updated legislation. Had this Notice been served after the legislation changed on May 17, 2018, Section 51(3) allows for consideration of the compensation to be excused in extenuating circumstances.

Regardless, based on the undisputed testimony of both parties, the consistent evidence before me is that the rental unit was demolished in May 2017. Consequently, I am satisfied that the Landlords have failed to use the rental unit for the stated purpose and that the Tenants have substantiated their claim that they are entitled to a monetary award of double the monthly rent pursuant to Section 51 of the *Act*. I find that the Tenants are entitled to compensation as set out in Section 51 of the *Act* in the amount of **\$2,900.00**.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

Item	Amount
Two months' compensation based on the Notice	\$2,900.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$3,000.00

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$3,000.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 22, 2019

Residential Tenancy Branch