



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for a monetary loss or other money owed pursuant to sections 51 and 67 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both tenants, the purchaser "DB", and the landlord "TP" attended the hearing. The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing.

The tenants testified that they served the Tenants' Application for Dispute Resolution hearing package ("dispute resolution hearing package"), along with their evidence, to the original landlord and the purchaser by way of registered mail. The landlord and purchaser confirmed receipt of the tenants' dispute resolution hearing package and the tenants' evidence. Therefore, I find that the landlord and purchaser have been served with the tenants' notice of dispute resolution package, and accompanying evidence, in accordance with section 89 of the Act.

The tenants confirmed receipt of the evidence provided by the landlord and the purchaser.

For the purpose of this decision, I find that the respondent “DB” qualifies as a purchaser pursuant to the definition of “purchaser” as defined in section 49 of the Act. I find that the respondent “TP” qualifies as a “landlord” as defined in section 49 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for a monetary loss or other money owed pursuant to sections 51 and 67 of the Act?

Are the tenants entitled to recover the filing fee for this application from the landlord pursuant to section 72?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and /or arguments are reproduced here. I refer to only the relevant facts and issues in this decision. The principal aspects of the tenants’ claims and my findings are set out below.

The parties agreed that the tenancy began on October 01, 2013, and that neither a security deposit nor pet damage deposit was provided by the tenants. The monthly rent was set at \$1,700.00, and was payable on the first day of each month.

The subject rental unit is the upper suite located in a single-family detached house. The house also contains a lower suite, which is not the subject of this application, as it did not form part of the unit defined as the rental unit as part of the tenancy between the parties.

The parties agreed that the tenancy ended on October 31, 2017, pursuant to a Two Month Notice to End Tenancy for Landlord’s Use of Property (the Two Month Notice), dated August 24, 2017. The tenants vacated the rental unit by October 31, 2017. A copy of the Two Month Notice was submitted as evidence by the landlord.

The landlord provided as evidence a letter in which the purchaser attested that he intended, as of November 01, 2017, in good faith, to occupy the residential property (the rental unit) which he purchased from the seller (the landlord TP).

The landlord testified that based on the good faith intentions conveyed by the purchaser, she issued the Two Month Notice to the tenants for the following reasons:

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 acknowledged receipt of the Two Month Notice during the final week of August 2017, and confirmed that it was received before September 01, 2017.

The tenants testified that they seek a monetary order in the amount of \$10,500.00. The tenants did not provide a monetary order worksheet, or any other document which contained an itemized list which depicted a cost incurred/loss suffered or an explanation or an accounting of how they arrived at the amount of \$10,500.00. The tenants cited that the \$10,500.00 was a general number “thrown out there”, which they determined to encompass their request for compensation for the following:

- Find new living space
- Finance a new trailer (fifth wheel) in which to live
- Sell furniture after having to vacate the rental unit
- Procure utility services for the new trailer (bring in water, sewer, hydro)
- Dig septic field
- Sell belongings other than furniture (such as TV and other belongings)
- Incur credit card debt

The tenants also seek compensation pursuant to section 51(2) of the Act. The tenants asserted that the purchaser did not adhere to reasons given by the landlord on the Two Month Notice. The tenants asserted that the purchaser entered into a new tenancy, thereby violating the good faith requirement for ending the tenancy pursuant to section 49(5) of the Act. The tenants asserted that the purchaser had not intended to occupy the unit after the tenancy ended; rather, his intention was to re-rent it.

The purchaser testified that he had, in good faith, intended to occupy the rental unit after purchasing it from the landlord. The purchaser asserted that on November 01, 2017, he became the new owner of the house in which the rental unit was located. The purchaser testified that he undertook efforts to greatly modify the house before he and his wife would begin living there.

As evidence, the purchaser provided numerous documents which depict his correspondence with contractors, tradespeople, and designers regarding the planned

renovations to the house and the delay in those renovations/modifications once the work had commenced within the six-month period.

The purchaser testified that he did not make merely minor cosmetic changes to the rental unit. Rather, the purchaser testified, he converted the upper floor of the house from a two-bedroom layout to a one-bedroom enlarged master bedroom layout. The purchaser stated that the changes involved structural modifications which required permits from the municipality that has jurisdiction over building permit for the region in which the house is located.

The purchaser testified that the modifications were large in scale and cost close to \$115,000. The purchaser cited that his decision to convert the upper floor to a one-bedroom layout, instead of retaining the two-bedroom layout, was to fit the intended use that he and his wife had planned. The purchaser cited that such modifications, to reduce the number of bedrooms in an area with a "housing crunch", would make the house less desirable on the rental market. The purchaser said he highlighted this to dispute the tenants' assertion that the purchaser had not intended to occupy the home.

The purchaser testified that the delays to the modifications to the house were due to many sources, including design delays, delays obtaining permits, delays to procure tradespeople, and general delays with falling behind schedule.

The purchaser says that his primary residence was sold, and that he had hoped to have the newly purchased home read to occupy as his primary residence. However, due to delays, the purchaser had to procure living accommodation as the modifications to the purchased home were not completed. Therefore, the purchaser stated, he had to find an accommodation to rent while his home was being modified. As a result, the purchaser stated that he had to enter into a rental agreement to rent a unit until such time that his new home was ready to occupy.

The purchaser testified that was difficult to find month-to-month or short-term rental accommodation in either Whistler or Pemberton, and that the house was not ready to occupy by February 01, 2018. The purchaser said that due to the very competitive housing and rental market in the area, the only method by which to procure accommodation in a unit that he and his wife determined to be a good fit was to enter into a fixed-term tenancy agreement which extended to June 2019.

The purchaser said that he moved-in to his new rental accommodation on February 15, 2018. The purchaser testified that he attempted to find rental accommodation on a

month-to-month basis, or a much short fixed-term, but was unable to do so, as the housing market is competitive and that prospective landlords demanded certain conditions, such as length of the fixed-term, with respect to accommodation that was comparable to the requirements that he and his wife had.

The purchaser said that the modification work to his purchased house was not completed until late May 2018. The purchaser said he was not able to end his fixed-term tenancy, and that he did not wish to pay rent for his own rental unit and the cost of the empty home at the same time. The purchaser said he entered into a tenancy with tenants to occupy his home (the former rental unit), which commenced on June 01, 2018.

The purchaser said that for the six-month period following the end of the applicant tenants' tenancy, he made a good faith effort to adhere to his initial reasons to ask the landlord TP to issue the Two Month Notice. The purchaser said that there were numerous delays with contractors, designer, contractors, and tradespeople, and that he submitted as evidence correspondence highlighting the delays. These delays, he asserted, hindered his ability to move-in to the home as he had originally planned.

The purchaser testified that for the six-month period following the end of the applicant tenants' tenancy, the property remained vacant, and was not occupied by anybody. Rather, he asserted, that six-month period was used in order to have the home ready so that the purchaser could adhere to his intentions to move-in.

The purchaser says that he did eventually enter into a tenancy with new tenants, but that the tenancy commenced after the six-month period following the end of the tenants' tenancy. Therefore, the purchaser asserted, section 49(5) of the Act was not violated and that section 51(2) of the Act does not apply.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.

Regarding the tenants' claims for compensation, when establishing if monetary compensation is warranted, I find it important to note that Residential Tenancy Policy Guideline # 16 (Policy Guideline 16) outlines that the purpose of compensation is to put

the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the landlord/purchaser fail to comply with the Act, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- **Did the tenant prove the amount of, or value of, the damage or loss?**
- Did the tenant act reasonably to minimize that damage or loss?

[my emphasis added]

The claimant must **prove the existence of the damage/loss** (emphasis added), and that it stemmed from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the **claimant must then provide evidence that can verify the actual monetary value of the loss or damage** (emphasis added). In this case, the onus is on the tenants to prove their claim for a monetary award.

With respect to the tenants' claim for compensation resulting from their losses suffered or expenses incurred after the end of the tenancy, I find that the tenants have failed to prove the amount of, or value of, the expenses or loss. The tenants have not provided any evidence (invoices, photographs, witness statements, etc.) to quantify or verify that they suffered a loss as a result of having to sell furniture and belongings. The tenants have not provided any evidence to establish the costs they incurred to procure new accommodation, such as the effort undertaken to procure and prepare a "fifth wheel" as their residence, and the costs associated with doing so.

Based on the foregoing, I find that tenants have failed to satisfy the four-part test, as outlined in Policy Guideline 16, as they have not proven the amount of, or value of, the purported damage or loss, as the onus to do so rests with the tenants. Instead, the tenants testified to having just "thrown a number out there" as an attempt to provide a general figure to encompass the totality of their claim. Therefore, I dismiss this portion of the tenants' claim for compensation.

With respect to the tenants' claim for compensation pursuant to section 51(2) of the Act, I find as follows.

Based on the Two Month Notice entered into evidence and the testimony of both parties, I find that service of the Two Month Notice was effected on the tenants before September 01, 2017, during the final week of August 2017.

On the date the Two Month Notice was served on the Tenants, section 51(2) of the Act stated, in part, that if:

- 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
- 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 must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The onus or burden of proof is on the party making the claim. I find that the tenants have not proven, on a balance of probabilities, that the landlord or purchaser breached the reason cited as the basis for issuing the Two Month Notice under section 49(5) of the Act.

In contrast, I find that the purchaser has provided documentary evidence depicting his intention to occupy the rental unit after he became the owner, and further, the purchaser took steps to have the property prepared for his occupation within the six-month period.

I also find that the property remained vacant during this period as work was being done to have the property modified so that the purchaser could commence occupancy there.

I also find that the purchaser has proven that he did not enter into a new tenancy within the six-month period following the end of the tenancy, and that it was only after the six-month period had elapsed that the purchaser permitted new tenants to occupy the rental unit. I find that the purchaser has adequately cited the reasons as to why he could not occupy the rental unit himself, due to delays in having the property modified, and his need to find alternate accommodation for himself due to delays beyond his control.

This portion of the tenants' monetary claim is predicated on the assertion that the landlord or purchaser breached section 51(2) of the Act. As I have found that neither the landlord nor the purchaser breached section 51(2) of the Act, I dismiss the tenants' application without leave to reapply.

Conclusion

The tenants' application is dismissed in its entirety 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: February 27, 2019

Residential Tenancy Branch