



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on March 7, 2019. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51 and 67; and,
- recovery of the filing fee.

The Tenant attended the hearing. Two separate parties were present for the Landlord. T.K. was present and provided testimony and evidence. T.K. was planning on buying the subject property, and requested vacant possession of the unit (as per the 2-Month Notice). However, he was unable to complete the purchase, and K.J. is the assignee who ended up buying the property. K.J. was also present, with her counsel, and provided testimony and evidence. Both Landlords confirmed receipt of the Tenants application. All parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant is looking for 12 months' rent in compensation, pursuant to section 51 of the Act. However, during the hearing, it was explained that 12 months' rent in compensation is only payable in situations where the Tenant receives the 2-Month Notice to End

Tenancy for Landlord's Use (the Notice) on or after May 17, 2018. In this case, the Tenant received the Notice on March 28, 2018, and the maximum compensation under this portion of the Act is equivalent to 2 months' worth of rent, as per the legislation at that time.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

The Tenant stated that monthly rent was \$1,900.00 per month. The Notice was provided into evidence. This Notice was given to the Tenant on March 28, 2018. On page 2 of the Notice, the Landlord (at that time) selected the following ground as the basis for the Notice:

- 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 Tenant stated that she did not want to move, and would have liked to stay if she could have. The Tenant expressed that this move has brought her a lot of hardship.

The Tenant is seeking 2 month's compensation, pursuant to section 51 of the Act, because the Landlord and purchaser did not perform the stated purpose on the Notice (demolished/renovated the house rather than move in).

The "Landlord" testimony will be broken down into two categories, as follows, representing the two parties involved.

Landlord - Testimony and evidence of T.K.

TK stated that he entered into a written agreement, as evidenced by the Contract of Purchase and Sale provided into evidence, whereby he would purchase the subject property. TK also stated that he requested vacant possession of the rental unit because he was going to move in with his family. However, TK stated that he ran into financial troubles and had to seek an alternative buyer to assign his contract to. TK stated that

the completion date of the transaction was June 19, 2018, and that the prior to that time, he needed to find someone who he could assign the purchase to. TK stated that he entered into an agreement with KJ (the current owner), where she was assigned the rights and responsibilities of the original Contract of Purchase and Sale.

TK stated that he had every intention of moving into the house but his financial situation made him unable to complete on the house transaction. TK stated that when the house was demolished, it was not his fault because it is KJ's responsibility to uphold the reasons listed on the Notice, as she was the purchaser, with title to the property.

Landlord - Testimony and evidence of K.J.

The current owner, KJ, attended the hearing with her lawyer (collectively referred to as "KJ"). KJ stated the TK should be responsible for any compensation that is due under section 51 of the Act because he was the one who requested vacant possession of the rental unit so that he could live in it. KJ stated that she visited the property in mid May 2018, and the property was empty, and smelled heavily of mold. KJ stated that she decided that the best remedy would be to rebuild/demolish the house. KJ entered into an agreement with TK so that he could assign the Contract of Purchase and Sale to her. KJ stated that as an assignee, she is not the original purchaser, and she is an innocent 3rd party. KJ stated that she is only subject to the provisions under the assignment of contract of purchase and sale.

Documentary evidence

The Assignment of Contract of Purchase and Sale (the Assignment Contract) was provided into evidence and shows that TK assigned the Contract of Purchase and Sale to KJ. This agreement was signed on May 23, 2018. This Assignment Contract lists a number of terms. Of particular relevance is item 4.8, which states as follows:

4.8 ASSUMPTION AND INDEMNITY BY ASSIGNEE: The Assignee covenants and agrees with the Assignor that it will observe and perform all of the obligations of the original buyer under the Contract as if it had been originally named as the buyer, and will indemnify and save harmless the Assignor from all actions, suits, costs, losses, damages, charges and expenses incurred by the Assignor and arising out of any failure on the part of the Assignee to fully effect or perform the buyer's obligation under the Contract. The Assignee covenants and agrees with the Assignor to remove all of the buyer's conditions and pay all increases in the deposit required under the Contract.

Also provided into documentary evidence is a letter from KJ stating that she understands that under the original Contract of Purchase and Sale, a 2 Month Notice to End Tenancy was issued by the assignor, TK.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenant is seeking two month's rent in compensation (2 x \$1,900.00) because the purchaser and Landlord of the rental unit did not utilize the unit for the purpose stated on the Notice.

First, I turn to the following portion of the Act which outlines what the Tenants would be entitled to if the landlord did not use the property for the stated purpose for at least 6 months:

Tenant's compensation: section 49 notice

- 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.

In this case, the previous landlord and owner issued the Notice on March 28, 2018, because TK requested vacant possession so that he and his family could move in once they took possession.

I acknowledge that TK and his wife ran into some financial difficulties, and sought to back out of the purchase. As per the evidence and testimony, KJ was assigned the Contract of Purchase and Sale, initially signed by TK and his wife. After reviewing the Assignment Contract, I find it important to note that the Assignee (KJ) agreed that she would "observe and perform all of the obligations of the original buyer under the Contract as if it had been originally named as the buyer". KJ also was aware, as per the letter she drafted and signed on May 24, 2018, that TK had issued a 2 Month Notice to End Tenancy for Landlord's Use of the Property.

I note both TK and KJ are listed as the “Landlord” on this application. However, having reviewed the various documentation, I find KJ is the Landlord responsible for upholding the stated purpose on the 2 Month Notice to End Tenancy. I note that TK never completed on the sale, and was never on title as the owner.

In making this determination, I note that she explicitly agreed under the Assignment Contract that she would “observe and perform all of the obligations of the original buyer under the Contract as if it had been originally named as the buyer”, and also that she would “indemnify and save harmless the Assignor [TK] from all actions, suits, costs, losses, damages, charges, and expenses incurred by the Assignor and arising out of any failure on the part of the Assignee to fully effect or perform the buyers obligation under the Contract.”

I further note that the original Contract of Purchase and Sale specifically mentions the Tenant being served with a 2 Month Notice pursuant to section 49 of the Act, if requested, and KJ specifically acknowledges in her letter that she is aware this was *requested* to the Tenant.

The undisputed evidence is that the purchaser and Landlord, KJ, demolished the rental unit, and did not move in after taking possession. As such, section 51 of the Act entitles the Tenant to monetary compensation which is equivalent to double the monthly rent payable under the tenancy agreement (2x\$1,900.00). It appears KJ agreed to observe and perform all obligations, as if she had originally been named as the buyer. I find this includes the responsibilities under section 49 and 51 of the Act with respect to managing the Tenant and the 2 Month Notice, as these issues appear to have been known about by KJ, and were mentioned in the Contract of Purchase and Sale and in her letter dated May 24, 2018. Further, it appears the Assignment Contract was worded such that KJ would take on any responsibilities (including actions, suits, and costs) with respect to the purchase of the house. I find KJ is responsible for compensating the Tenant, pursuant to 51(2) of the Act.

As the Tenant was successful with her application, I also grant her the recovery of the filing fee (\$100.00) against the Landlord (KJ), pursuant to section 72 of the Act.

In summary, I grant the Tenant a monetary order in the amount of \$3,900.00. This order is issued against the new owner, purchaser, and Landlord (KJ).

Conclusion

I grant the Tenant a monetary order in the amount of \$3,900.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: March 8, 2019

Residential Tenancy Branch