



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 tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for damage or compensation under the Act, regulation or tenancy agreement pursuant to sections 51 and 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant, the purchaser "IN", and the landlord "NF" 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 tenant testified that he served the Tenant's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), along with his evidence, to both respondents by way of registered mail. The respondents confirmed receipt of the dispute resolution hearing package and the tenant's evidence. Therefore, I find that respondents have been served with the notice of dispute resolution package, and the tenant's evidence, in accordance with section 89 of the Act.

Neither respondent provided any evidence with respect to this application.

For the purpose of this decision, I find that the respondent "IN" qualifies as a purchaser pursuant to the definition of "purchaser" as defined in section 49 of the Act. I find that the respondent "NF" qualifies as a "landlord" as defined in section 49 of the Act.

Preliminary Matter – Amending the application

For reasons which will be expounded later in this decision, I exercise my discretion under section 64(3)(c) of the Act to exclude the respondent “NF” as a party to this application. The respondent NF issued a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) based on what she determined to be the purchasers’ good faith intention to occupy the rental unit, which was presented to her in writing, after all of the conditions for sale of the rental unit had been satisfied.

It was the purchasers’ intention to end the tenancy, and it was the purchasers’ actions which the tenant alleges constituted a breach of section 49 of the Act. The breach alleged by the tenant occurred after the purchaser became the legal owner of the property which comprised the rental unit, at which time the respondent NF was no longer the landlord nor the legal owner of the rental unit.

Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the Act?

Background and Evidence

I have reviewed all evidence before me that met the requirements of the Rules of Procedure. While I have considered documentary evidence submitted and all oral testimony of the parties, I will only refer to the evidence and facts which I find relevant in this decision. Not all details of the respective submissions and / or arguments of the parties are reproduced here. The principal aspects of the tenant’s claim and my findings around it are set out below.

The original landlord and the tenant agreed that the tenancy began at some point in 2008. The tenant provided as evidence a copy of the most recent written tenancy agreement that was signed by the original landlord and the tenant. The original landlord and the tenant agreed that the monthly rent had been increased to \$1,450.00 and was due on the first day of each month. The original landlord and the tenant agreed that the tenant had provided a security deposit and pet damage deposit, both in the amount of

\$675.00. The parties agreed that at the end of the tenancy, both deposits had been returned to the tenant.

The subject rental unit is a single-family detached house. The tenancy was such that the tenant rented the entire house as the rental unit.

The tenant testified that on April 24, 2018, the landlord served him with a Two Month Notice to End Tenancy for Landlord's Use (the "Two Month Notice"), dated April 24, 2018, with an effective date of June 30, 2018. A copy of the Two Month Notice was submitted as evidence by the tenant.

The tenant confirmed receipt of the Two Month Notice on April 24, 2018. All parties agreed that this portion of the tenant's testimony was accurate.

The Two Month Notice stated the following reason for ending this tenancy:

- *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 parties agreed that pursuant to the Two Month Notice, the tenant received one month's free rent from the landlord, by withholding payment of rent for the month of June 2018, which represented the final month of the tenancy.

The parties agreed that the tenancy ended pursuant to the Two Month Notice. The tenant testified that he vacated the rental unit by June 28, 2018.

The original landlord "NF" testified that she received from her realtor, written notice provided by the purchasers that they intended, in good faith, to occupy the residential property (the rental unit) which they purchased from the seller (the respondent NF).

NF testified that based on the good faith intentions conveyed by the purchasers, she issued the Two Month Notice to the tenant for reasons cited on the Two Month Notice, as detailed above.

The purchaser IN testified to confirm the accuracy of the testimony provided by NF. The purchaser testified that he had conveyed to the seller (the original landlord NF) his intentions to occupy the rental unit. The purchaser IN testified that he instructed NF, via

communication relayed by the respective realtors for the purchaser and seller, to issue the Two Month Notice citing the reason that he and the other purchasers intended to occupy the rental unit which necessitated the tenancy to end.

NF testified that the sale of the property resulted in a completion date of May 30, 2018, at which time the purchasers became the legal owners of the property. NF provided that the purchasers took possession of the property on June 01, 2018. The purchaser testified to agree with these details provided by NF.

NF testified that she never had any direct communication with any of the purchasers, and that all communication with respect to sale of the property was conducted by way of the respective realtors for the seller and purchasers. Therefore, NF asserted, she could not have been privy to the purchasers' intentions after the completion date for sale of the property.

The purchaser provided affirmed testimony to confirm that after the tenant vacated the rental unit, none of the purchasers listed as respondents occupied the rental unit. The purchaser testified that after the tenancy ended, the house remained empty for a period of three months, during which time renovations were being made to the property. The purchaser testified that after renovations were complete, the house was listed for rent.

The purchaser provided that in October 2018, he entered into a new tenancy with an individual for the upper portion of the house. The purchaser testified that the lower portion of the house was offered as a separate rental unit and a new tenancy was entered into in November 2018 with an individual with respect to the lower suite.

The purchaser testified that the tenancy ended pursuant to the Two Month Notice dated April 24, 2018, and that for the six-month period subsequent to the end of the tenancy, none of the purchasers adhered to the reasons cited on the Two Month Notice to end the tenancy. The purchaser testified that he understood that by failing to adhere to the reason cited on the Two Month Notice, he violated the provisions of the Act which formed the basis of his instructions to have the Two Month Notice issued to the tenant to end the tenancy.

The tenant seeks compensation under the Act to be compensated an amount equal to two months' of the monthly rent paid at the time he vacated the rental unit, since the purchaser failed to comply with the reasons for which the Two Month Notice was issued. Therefore, the tenant seeks \$2,900.00, which represents double the monthly rent of \$1,450.00 paid with respect to the tenancy.

Analysis

Based on the Two Month Notice entered into evidence and the testimony of all parties, I find that service of the Two Month Notice was effected on the tenant on April 24, 2018, in accordance with section 88 of the Act.

Section 49(5) of the Act provides, in part, the following with respect to how a tenancy can end:

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c)the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

On the date the Two Month Notice was served on the tenant, section 51(1) of the Act stated that a tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. I find that this component of the compensation owed to the tenant was adhered to, as the tenant withheld the monthly rent for June 2018, which was his final month of occupancy of the rental unit.

On the date the Two Month Notice was served on the tenant, section 51(2) of the Act stated that in addition to the amount payable under subsection (1), 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.

All parties provided testimony which affirms the following:

- 1) The original landlord (NF) issued the Two Month Notice based on instructions from the purchasers, which conveyed the purchasers' good faith intention to occupy the rental unit.
- 2) None of the purchasers moved-in to the rental unit, rather, after completing renovations, the purchasers re-rented the rental unit by entering into new tenancy agreements with new tenants within the six-month period following the end of the tenancy.

Based on the foregoing, I find that the purchasers did not adhere to section 49 of the Act at the time the Two Month Notice was issued, since the purchasers did not subsequently occupy the rental unit.

I further find that the purchasers did not adhere to section 51 of the Act, as they entered into a new tenancy agreement with new tenants in October 2018 and November 2018 subsequent to the previous tenant vacating the rental unit on June 28, 2018. Since the purchaser provided affirmed testimony to confirm that he entered into a new tenancy agreement with new tenants within the six-month period following the end of the tenancy, I find that the purchaser has provided affirmed testimony that he violated the provisions of section 51 of Act.

I find that NF, who was the original landlord at the time that the Two Month Notice was issued, acted based on the good faith intentions conveyed to her by the purchasers (by way of communication conducted through realtors), and issued the Two Month Notice based on the intentions conveyed by the purchasers that they intended to occupy the rental unit.

I find that NF did not breach any part of either section 49 or 51 of the Act. The breach of sections 49 and 51 of the Act occurred as a result of the purchasers' action. Additionally, the breach occurred after NF was no longer the legal owner of the property, and after the tenancy had ended. Therefore, I find that NF will not be held liable for the breach committed by the purchasers, and that the purchasers will be the sole parties held liable to provided compensation to the tenant for breaching sections 49 and 51 of the Act.

Based on the foregoing, I find that pursuant to section 51 of the Act, the purchasers must compensate the tenant by paying him an amount that is the equivalent of double

the monthly rent payable under the tenancy agreement. Therefore, the purchasers are to pay the tenant \$2,900.00, which represents double the amount of the monthly rent, of \$1,450.00, owed under the tenancy at the time the tenant vacated the rental unit.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$3,000.00 against the purchasers, calculated as follows:

Item	Amount
Compensation pursuant to section 51 equivalent to two months' rent (2 x \$1,450.00)	\$2,900.00
Recovery of Filing Fee	\$100.00
Total Monetary Award to Tenant	\$3,000.00

The tenant is provided with a Monetary Order in the above terms and the respondent(s) must be served with this Order as soon as possible. Should the respondent(s) 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: March 18, 2019

Residential Tenancy Branch