



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 51(2) and 67 based on allegation that a rental unit was not used for the stated purpose for ending the tenancy.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 51(2) and 67?

Background and Evidence

The tenants testified that the tenancy started on December 15, 2011 and the monthly rent was \$650.00.

The landlord issued and served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on November 1, 2018. The Two Month Notice had a stated move out date of December 31, 2018. The stated purpose for the Two Month Notice was that rental unit had been sold and the purchaser requested vacant possession.

The tenants testified that they moved out of the rental unit on January 7, 2019. They testified that a week after they moved out they noticed a “for rent” sign was placed on the rental unit. The tenants produced a title report showing that the landlord still owns the property.

The landlord testified that he did have a contract sell the property but the deal collapsed in January 2019. The landlord presented a Contract of Purchase and Sale (the “Contract”) for the property dated September 25, 2018. The sales price was \$1,650,000.00 and the Contract stated that the buyer would provide a deposit of \$65,000.00 when the subject clauses were released. The Contract stated that the purchaser would have vacant possession of the property on January 15, 2019.

The landlord testified that the purchaser released the subject clauses on October 5, 2018. The landlord provided a copy of a cheque from the purchaser’s lawyer in the amount of \$65,000.00 which was referenced as a deposit on the cheque. The landlord testified that the purchaser provided the deposit cheque after the subject clauses were released.

The landlord testified that he became aware of that the sales transaction would not complete until just before the scheduled completion date. The landlord testified that the purchaser unexpectedly withdrew from the contract just before closing. The landlord testified that he is still disputing the rights to the \$65,000.00 deposit with the purchaser.

Analysis

The tenants are seeking compensation under section 51 of the *Act*, which states in part, as follows:

- 51(2) ..., 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 ... must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 6.6 state that the applicant, in this case the tenant, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the tenants to prove that, more likely than not, the facts occurred as claimed in order to prevail in their claim.

I find that the effective date of the Two Month Notice was January 1, 2019 and that the stated reason for the Two Month Notice was so that the landlords could sell the property pursuant to section 49(5) of the *Act*. Section 49(5) of the *Act* specifically states that:

- 49 (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...

Accordingly, the tenants can establish a claim for compensation under section 51(2) of the *Act* if the tenants can prove that the purchaser, or the purchaser's close family, did not occupy the rental unit for six months after the effective date of the notice.

I find that the neither the purchaser nor the purchaser's close family have occupied the rental unit at all. Furthermore, I find that the purchaser has not even completed the purchase of the property. Accordingly, I find that the tenants have sufficiently established a basis for compensation pursuant to section 51(2) of the *Act*.

However, even though the tenants have established a claim under section 51(2), we must also consider section 51(3) of the *Act* gives an arbitrator the discretion to excuse the landlord's conduct.

Specifically, section 51(3) states the following:

51 ...

- (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.

Residential Tenancy Branch Policy Guideline No. 50 explains extenuating circumstances as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

In this matter, based upon the landlord's uncontroverted testimony and the corroborating property sales documents, I find that the landlord was prevented from complying with the stated purpose of the notice by the extenuating circumstances of the purchaser's unexpected failure to complete the purchase of the property.

I find that the landlord did have a fully executed contract to sell the property to purchaser. Further, I am satisfied that the landlord believed that the subject clauses in the Contract were removed on October 5, 2018 when the landlord's agents received the \$65,000.00 purchase deposit from purchaser. The Contract states that the deposit would be provided when subjects were released. I find the delivery of the \$65,000.00 deposit evidences the release of the subjects. Furthermore, I find that the landlord reasonably expected the sale to go through after the landlord held a fully executed contract of purchase and sale, the subject clauses were released and a \$65,000.00 deposit was provided.

I find that to order the landlord to provide compensation in these circumstances where I find that the unexpected failure to perform the stated purpose of the Two Month Notice was the result of the purchaser's actions and not that landlord's actions, would be unreasonable and unjust. Accordingly, I exercise my discretion under section 51(3) of the *Act* to excuse the conduct of the landlord in failing to perform the stated purpose of the Two Month Notice and I dismiss the tenants' application for monetary compensation.

Conclusion

The tenants' application is dismissed.

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: July 09, 2019

Residential Tenancy Branch