



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

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

- a monetary order for compensation in the amount of 12 times the monthly rent payable under the tenancy agreement pursuant to section 51 for the landlord's alleged failure to comply with stated purpose on the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice");
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- authorization to recover the filing fee for this application pursuant to section 72.

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 tenant's entitled to a monetary order for compensation in the amount of 12 times the monthly rent payable under the tenancy agreement pursuant to section 51 for the landlord's alleged failure to comply with stated purpose on the landlord's Two Month Notice?

Are the tenant's entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

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

Background and Evidence

The tenancy started in 2016 and the monthly rent at the end of the tenancy was \$1,401.00. The security deposit has been returned.

The tenants complained that the blinds were moldy and the tenants testified that they replaced the blinds at a cost of \$96.32. The tenants testified that they replaced a light fixture at a cost of \$43.26. The tenants requested a monetary order of \$136.58 for reimbursement of these expenses. The landlord agreed to reimburse the tenant this amount.

The landlord testified that he signed a Contract of Purchase and Sale (the "Contract") on December 21, 2018. The landlord testified that the contract transferred a 50% interest in the property to new purchasers. The landlord also agreed to transfer a 25% interest in the property to his spouse. The Contract did not have any 'subject to' clauses. The landlord provided a copy of the Contract.

The landlord testified that the purchasers issued a written instruction on January 30, 2019 requesting vacant possession of the property because the purchaser intended to reside in the property.

The tenants testified that the landlord served a Two Month Notice on January 20, 2019 demanding the tenants move out by April 3, 2019. The stated reason for the notice to end tenancy was that the landlord had entered an agreement in good faith to sell the rental unit, all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy so that the purchaser may move into the rental unit. The tenants vacated the rental unit in early March 2019.

The tenants testified that the purchasers moved into the property in March 2019 whereas the landlord testified that the purchasers moved in during April 2019.

The landlord testified that the closing date for the sale was postponed several times. The landlord testified that the closing sale was postponed until June 17, 2019 and again until July 12, 2019. The landlord testified that sale final completed on July 12,

2019. The landlord testified that the purchasers have resided in the house since mid-April 2019 even though the sale did not complete until July 2019.

The landlord testified that that Contract completion date was delayed because he had to travel to India from March 10, 2019 to March 29, 2019 and from May 4, 2019 to May 20, 2019 to visit his mother who was very ill. In addition, the landlord testified that the purchasers had some delays obtaining mortgage financing.

Analysis

Since the parties have agreed on the tenants' request for reimbursement of the costs of the blinds and the lamp, I grant the tenants a monetary order of \$136.58 for reimbursement of these expenses pursuant to sections 63 of the *Act*.

The tenants are also 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 tenants, 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 April 3, 2019 and I find 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 if 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 purchasers did occupy the rental unit within a reasonable time after the effective date of the Two Month Notice of April 3, 2019. The landlord testified that the purchasers moved into the rental unit in mid-April 2019 which I find to be a reasonable time after the effective date of the notice to end tenancy. The tenants testified that the purchasers occupied the rental unit since March 2019 which is even before the effective date of the notice to end tenancy.

I do not find that it is relevant that the closing date of the Contract was postponed until July 12, 2019. I find that the purchasers satisfied the stated purpose of the notice to end tenancy by moving into the rental unit. Furthermore, I do not find the delay of closing from April 2019 to July 2019 because the landlord had to travel to India to visit his sick mother to be an unreasonable delay.

For the forgoing reasons, I dismiss the tenants' application for a monetary order for compensation in the amount of 12 times the monthly rent payable under the tenancy agreement pursuant to section 51 of the *Act*.

Since the tenants have been partially successful in this matter, I grant the tenants reimbursement of their filing fee pursuant to section 72 of the *Act*.

Accordingly, I grant the tenant's a monetary order of **\$236.58**, as calculated below.

<u>Item</u>	<u>Amount</u>
Agreed reimbursement of blinds and lamp	\$136.58
Filing fee	\$100.00

Total	\$236.58
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Conclusion

I dismiss the tenants' application for a monetary order for compensation in the amount of 12 times the monthly rent payable under the tenancy agreement pursuant to section 51 of the *Act*.

I grant the tenants a monetary order in the amount of **\$236.58**. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court to 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: August 01, 2019

Residential Tenancy Branch