



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords, landlord BW ("landlord") and landlord GR ("purchaser"), the tenant, and the purchaser's English language interpreter attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 61 minutes.

The "landlord's wife" SB testified as a witness on behalf of the landlord. The "tenant's husband" testified as a witness on behalf of the tenant. Both witnesses were excluded from the outset of the hearing. All parties had equal opportunities to question both witnesses. The tenant chose not to call a witness regarding service of documents. I determined that the purchaser's witness was not required, as his testimony would be irrelevant, based on the purchaser's information.

Preliminary Issue - Previous Hearings and Service of Documents

This hearing originally occurred on October 8, 2019 ("original hearing") after which a decision, dated October 8, 2019 ("original decision"), was issued by a different Arbitrator. The original decision granted the tenant a monetary order of \$16,300.00 ("original monetary order") for twelve times the monthly rent of \$1,350.00 and the \$100.00, application filing fee, against the purchaser only, not the landlord.

The purchaser applied for a review of the original decision, alleging that he was unable to attend the original hearing. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated December 20, 2019 (“review decision”). As per the review decision, the purchaser was required to serve the tenant and the landlord with a copy of the review decision, the notice of review hearing, and the purchaser’s address for service.

The tenant and the landlord confirmed receipt of the above review documents and evidence from the purchaser. In accordance with sections 89 and 90 of the *Act*, I find that the tenant and the landlord were duly served with the required review documents and evidence from the purchaser.

The purchaser and tenant confirmed receipt of the landlord’s evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the purchaser and tenant were duly served with the landlord’s evidence package.

The landlord and purchaser confirmed receipt of the tenant’s original application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord and purchaser were duly served with the tenant’s original application.

The tenant confirmed receipt of the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of Property, dated May 17, 2019 (“2 Month Notice”) on the same date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord’s 2 Month Notice on May 17, 2019.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) of the *Act*?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant’s claims and my findings are set out below.

The landlord and tenant agreed to the following facts. This tenancy began in October 2010 and ended on July 31, 2018. Monthly rent of \$1,350.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant and the landlord returned the deposit to the tenant. A written tenancy agreement was signed by both parties.

All parties agreed to the following facts. The tenant vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the 2 Month Notice was July 31, 2018. The reason indicated on the 2 Month Notice was (my emphasis added):

- *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 seeks compensation under section 51(2) of the Act for twelve months of rent compensation of \$1,350.00, totaling \$16,200.00, plus the \$100.00 application filing fee. The tenant claims that because the rental unit was not used for the purpose on the 2 Month Notice, she is entitled to compensation. The landlord and purchaser dispute the tenant's application.

The tenant testified regarding the following facts. She first received the landlord's 2 Month Notice on May 9, 2018, but it did not state the effective move-out date on the notice. The landlord's wife issued a proper notice to the tenant on May 17, 2018, with an effective date of July 31, 2018. The landlord stated on the notice that he was selling the rental unit and the purchaser would move in. The purchaser did not move in and instead rented the house to new tenants, a few weeks after the tenant moved out.

The tenant's husband testified that the tenant submitted a video recording of a conversation that the tenant's husband had with the purchaser. In that video, the tenant's husband stated that the purchaser told him that he would not demolish the rental unit, but the purchaser wanted to move into the unit himself.

The landlord testified regarding the following facts. He issued the 2 Month Notice to the tenant in good faith. He first issued the notice on May 9, 2018 but it had no effective date so his wife issued another 2 Month Notice on May 17, 2018, with an effective date of July 31, 2018, because he was out of town at the time. On May 9, 2018, the landlord attended at his lawyer's office to sign a contract of purchase and sale ("CPS") with the purchaser. He found out that his lawyer was the same as the purchaser's lawyer. The

purchaser verbally told the landlord at the lawyer's office that he wanted to move into the rental unit after purchasing it, and only on this condition, did the landlord agree to sell the rental unit. This verbal agreement is documented in the landlord's written statement, which was provided for this hearing. There was no written agreement for the purchaser to move in, it was only a verbal agreement. The CPS does not state that the purchaser wanted to move into the rental unit, nor was any other written document issued to this effect.

The landlord's wife testified regarding the following facts. She was present at the lawyer's office on May 9, 2018 with the landlord, the purchaser and their lawyer. All parties agreed on the sale of the rental unit. The purchaser verbally stated that he would move into the rental unit for six months. The CPS was signed at that time. The CPS indicates on page 3 of 7 at the top of the page, which was initialled by the landlord and the purchaser, that: "the seller will deliver a 60 day notice to vacate at the end of May 2018." Nothing else was provided in writing by the purchaser for him to move into the rental unit.

The purchaser testified regarding the following facts. The landlord agreed that nothing was provided in writing by the purchaser for him to move into the rental unit. There was no verbal or written agreement between the landlord and the purchaser for the purchaser to move into the rental unit. The purchaser currently has two people living in his property with him so they could not move into the rental unit, due to health concerns. The landlord, in his own written statement, indicated that he wanted to sell the rental unit because of maintenance issues. The landlord and purchaser met at their lawyer's office on May 9, 2018 to sign the CPS but there is nothing in the CPS indicating that the purchaser would be moving into the rental unit. There is no other written document indicating that the purchaser would be moving into the rental unit. The landlord did not show the 2 Month Notice or provide a copy of it to the purchaser, so he did not know why it was being issued by the landlord to the tenant. Neither the purchaser nor his family members moved into the rental unit after the tenant vacated. The rental unit was re-rented by the purchaser to new tenants from September 1, 2018 to present.

Analysis

Section 49(5) states the following with respect to the 2 Month Notice (my emphasis added):

- (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:

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 51(2) of the Act establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the Act. This provision became effective on May 17, 2018. Section 51(3) of the Act states that an Arbitrator may excuse the landlord or purchaser from paying this compensation if extenuating circumstances exist.

Sections 51(2) and (3) state as follows:

51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(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 Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

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.*

I make the following findings, on a balance of probabilities, based on the testimony and written evidence of all parties and their witnesses.

I find that the 2 Month Notice, dated May 17, 2018, and issued to the tenant on the same date, stating an effective date of July 31, 2018, is the proper valid notice in this case. Section 52(c) of the *Act* states that for a notice to end tenancy to be effective, it must state the effective date on the notice. All parties agreed that only the notice from May 17, 2018 stated an effective date, not the notice issued on May 9, 2018, which did not indicate an effective date. Therefore, I find that the new law for section 51 of the *Act*, as noted above, using the twelve-month rent compensation as of May 17, 2018, rather than the former two month rent compensation, is the valid law in this case.

I find that the tenant vacated the rental unit on July 31, 2018, pursuant to the 2 Month Notice, as all parties agreed to this fact. I find that the landlord sold the rental unit and all conditions for the sale were satisfied, as all parties agreed to this fact.

However, I find that the purchaser did not ask the landlord in writing to issue the 2 Month Notice because the purchaser or a close family member intended in good faith to

occupy the rental unit. While all parties agreed that the CPS states that the landlord “will deliver a 60 day notice to vacate at the end of May 2018,” it does not state what the purpose of the notice is. The CPS does not state that the purchaser or a close family member intends to occupy the rental unit. No other document was provided by the parties indicating that the purchaser or a close family member intends to occupy the rental unit. The purchaser was not given a copy of the 2 Month Notice by the landlord to show him the purpose for which the landlord was issuing the notice, which was for the purchaser to move in.

Both the 2 Month Notice and section 49(5) state that the 2 Month Notice can only be issued for the purpose of the purchaser or a close family member occupying the unit. The RTB 2 Month Notice form indicates that the notice is given “because” the purchaser or a close family member intends to occupy the unit. Section 49(5) states that the notice must be given “on one of the following grounds.” I find that the notice cannot simply be given for any reason, but it has to be a reason set out in the notice and the law: for the purchaser or a close family member to occupy the unit. Both the 2 Month Notice and section 49(5) state that the 2 Month Notice can only be issued if the purchaser asks the landlord in writing to issue it for moving in, it cannot be a verbal agreement.

I find that the landlord failed to show extenuating circumstances prevented him from using the rental unit for the purpose in the 2 Month Notice. The landlord and his wife both had the benefit of a lawyer and legal advice, when the landlord said he signed the CPS with the purchaser. The landlord did not indicate in the CPS or in any other written document that he was issuing the 2 Month Notice for the purchaser to move into the rental unit. The landlord did not provide a copy of the 2 Month Notice to the purchaser when he issued it, notifying the purchaser of the reason for issuing the notice. The landlord had an opportunity to cancel the notice before the tenant moved out and failed to do so.

Therefore, I find that the landlord breached sections 49(5)(c) and 51(2)(b) of the *Act*. The purchaser did not ask the landlord to give notice in writing to end the tenancy in order for him or a close family member to move in and hence, the purchaser or a close family member did not occupy the rental unit for at least six months after the tenant vacated on July 31, 2018. I find that the landlord failed to show extenuating circumstances prevented him from fulfilling the above sections of the *Act*.

Accordingly, I find that the tenant is entitled to twelve times the monthly rent of \$1,350.00, as compensation under section 51 of the *Act*, which totals \$16,200.00, from

the landlord only, not the purchaser. I also find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, not the purchaser, as she was successful in this application.

Section 82(3) of the *Act* states:

Following the review, the director may confirm, vary or set aside the original decision or order.

In accordance with section 82(3) of the *Act*, I set aside the original decision and original monetary order, both dated October 8, 2019. The original monetary order, which was granted against the purchaser only, not the landlord, is hereby cancelled and of no force or effect.

I issue a monetary Order in the tenant's favour in the total amount of \$16,300.00, against the landlord only, not the purchaser.

The tenant's entire application, as against the purchaser, is dismissed without leave to reapply.

Conclusion

The original decision and original monetary order, both dated October 8, 2019, are set aside. The original monetary order is cancelled and of no force or effect.

I issue a monetary Order in the tenant's favour in the total amount of \$16,300.00, against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: February 25, 2020

Residential Tenancy Branch