



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fairborne Properties Limited d [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction and Preliminary Matters

This hearing was convened on October 1, 2019, as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for having received and acted upon a landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Notice);
- recovery of the filing fee paid for this application.

After 73 minutes, the hearing time expired. The hearing was then adjourned and an Interim Decision was issued on October 9, 2019. As such, this Decision must be read in conjunction with that Interim Decision.

The hearing re-convened on January 13, 2020, at which time the tenant's legal counsel immediately requested an adjournment of the hearing as her client, the tenant, would be unable to attend.

The landlords and their representatives agreed that the hearing should be adjourned for the reasons given at the hearing.

The hearing was then adjourned for a second time and a second Interim Decision was issued on January 13, 2020. As such, this Decision must be read in conjunction with that second Interim Decision.

The parties listed in the style of cause page attended the hearing. The parties were reminded they were still under their affirmation to provide truthful testimony at the hearing.

The multiple parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, cross examine the other parties, and make submissions to me.

I have reviewed all the considerable oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to compensation from the listed landlords and to recover her filing fee?

Background and Evidence

While I have turned my mind to all the documentary and oral evidence, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The tenant's monetary claim against the respondents is \$20,400.00, which is the equivalent of 12 months' rent. The tenant has also requested the filing fee of \$100.

As the basis for this claim, the tenant submitted that she is entitled to this amount as she received a Two Month Notice to End Tenancy for Landlord's Use of Property and that the rental unit was not used for the stated purpose listed on the Notice.

I have determined that the undisputed facts in this case are as follows:

This tenancy began on June 1, 2012, and ended on February 28, 2019.
The ending monthly rent was \$1,700.

Respondent EA (EA) and participant RA were listed as landlords on the written tenancy agreement.

The Notice received by the tenant was dated January 1, 2019, was signed by EA and served on the tenant on or about January 15, 2019, listing an end of tenancy date of March 16, 2019.

As a reason for ending the tenancy, the Notice listed all 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.

That on February 2, 2018, the landlord EA, as Vendor (seller) and FPL, purchaser, signed the Offer to Purchase (Offer) the property containing the rental unit (rental property).

That the Offer contained an option for the Vendor, EA, to lease back the Lands and premises on the closing date, by entering into a rental agreement for a period up to twelve months, at a rental rate of \$0.00 per month for the first six months and \$2,000.00 per month for the remaining six months.

The Offer contained an option that the Vendor may terminate any such lease early.

The Offer granted the Vendor an option to rent out the Lands during the leaseback period, with all rent proceeds to be kept by the Vendor.

The Offer contained a provision that the Vendor was responsible for providing proper notice to prospective tenants to terminate any such tenancies from the leaseback period.

That the Vendor/landlord EA elected to lease back the Lands after the closing dates, and that the tenant remained in the rental unit until receiving the Notice from the landlord.

That the tenant's evidence showed that the tenant continued to make all rent payments by cheque payable to RA, through the end of her tenancy.

The tenancy ended on or about February 28, 2019, when the tenant vacated the rental unit.

That the rental unit is not being used for the stated purpose as listed on the Notice.

Tenant's submissions and arguments-

When questioned by her advocate, the tenant said that she made all rent payments to RA through the end of the tenancy, and that although she was aware the property was being sold, neither RA nor EA offered to negotiate a new tenancy.

The tenant said she was not aware that EA and FPL had entered into a tenancy agreement and that no one made her aware that she was subletting. The tenant said further that no one offered her a sublet agreement.

The tenant submitted that she had asked a representative of the purchaser, FPL, if she could stay in the rental unit an extra 5-6 months beyond the Notice date, and his reply was that she would have to go through a standard application process as with any new tenant.

The tenant said that she ultimately rented the house next door to the rental unit, from FPL, with an increased rent to \$2,400.00.

The tenant said that rental unit was rented to someone else for one or two months, that others live there now, and that none of the subsequent occupants were family members.

Submissions from the tenant's legal counsel and advocate-

The advocate questioned TJ as to why they did not submit a full copy of the Offer to Purchase agreement. TJ said he submitted what was important.

The advocate submitted that the purchaser knew that there were month-to-month tenancies affecting the property, as shown by the Offer to Purchase agreement.

The advocate submitted that there could not have been a new tenancy agreement between the landlord EA and the purchaser as there was another tenancy agreement in place, referencing the legal principle of "nemo dat". In other words, FPL never had the right to possession.

Respondent/landlord EA's submissions-

The landlord confirmed that the sale of the property was completed on April 16, 2018, at which time the purchaser, FPL, and the landlord signed a tenancy agreement for a fixed term from April 16, 2018 through April 15, 2019. Clause 5 of the addendum to the tenancy agreement states that the premises must be vacated at the end of the term.

The landlord submitted that she and the purchaser also signed a Mutual Agreement to End a Tenancy, providing that the premises must be vacated by April 15, 2019.

The landlord submitted that RA was in constant contact with the tenant advising that the rental unit must be vacated on April 15, 2019.

The landlord submitted that during the fixed term, she tried to contact the purchaser seeking permission to allow the tenant to stay in the rental unit, but was denied.

The landlord submitted that she did not have any options but to provide the tenant with a Two Month Notice to ensure vacant possession by April 15, 2019.

EA also said she was heavily pregnant at the time of the sale and was threatened into signing the sales agreement.

EA said that PF, from FPL, and her realtor threatened her every day.

Submissions by the respondent, FPL-

The respondent was not a party to the lease agreement between EA and the tenant and that the eviction Notice was issued by EA, not FPL.

The respondent submitted that EA exercised her right to lease back the property for a full year, in effect sub-leasing the property. In return, the landlord had six months free rent and then commenced payments for six months to FPL.

The respondent submitted that the tenant's own evidence shows that she continued to pay her monthly rent to RA until the end of the tenancy.

The respondent submitted that FPL never indicated in writing or otherwise to the landlord that FPL wished to occupy the rental home.

The respondent submitted that it was EA who issued the Notice and that they were unaware that EA had issued the Notice until receiving the tenant's application.

TJ, agent for the property management company representing FPL, said that they never gave instructions to EA to issue the Notice. Additionally, he said EA had the obligation

to deal with the tenancy and as FPL is a corporation, there would not have been an intent to move into the rental unit.

TJ said that EA should look to her realtor as to why such clauses were in the sales agreement, questioning why any realtor would represent their client in that way.

TJ said that in the case of a sale with an existing tenancy, they would have made an arrangement to get vacant possession, if known.

Examination of respondent's FPL's legal counsel, GF, of the development manager, VC-

When questioned, VC said that FPL did not know there was a tenancy when they purchased the property and had they known, they would have assigned the lease.

GF independently said there seemed to be a lot of fuss over the purchase agreement, but the document stood on its own.

Analysis

I have reviewed all testimonial, documentary, other evidence and submissions. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

My findings are based upon a balance of probabilities.

On the basis of the undisputed evidence, at the end of the tenancy, I find the monthly rent was \$1,700.

On the basis of the undisputed evidence, I find that, on or about January 16, 2019, the landlord EA served the tenant with a Two Month Notice to End Tenancy, pursuant to section 49 of the Act. The Notice declared that 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 the notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

I have reviewed the Notice and find it is on the Residential Tenancy Branch (RTB) approved form with content meeting the statutory requirements under section 52 the Act.

Section 51(2) of the Act provides that if 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 if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

On the basis of the undisputed evidence I find that the rental unit was not used for the stated purpose, as it was rented out almost immediately to other tenants by FPL, who had purchased the rental unit and other homes in the area.

I therefore find the tenant has established a monetary claim of \$20,400, the equivalent of 12 months' rent of \$1,700.

The issue then becomes who is responsible for payment of the compensation owed to the tenant.

I turn to section 44 (1) of the Act. This section states that a tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 *[tenant's notice]*;
- (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
- (ii) section 46 *[landlord's notice: non-payment of rent]*;
- (iii) section 47 *[landlord's notice: cause]*;
- (iv) section 48 *[landlord's notice: end of employment]*;
- (v) **section 49 *[landlord's notice: landlord's use of property]***;
- (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
- (vii) section 50 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g)the tenancy agreement is a sublease agreement.

[emphasis added]

I therefore find this tenancy did not end until the tenant received and acted upon the Notice from landlord EA.

As further support for this finding, the tenant continued to make all rent payments to RA, who was listed as a landlord on the tenancy agreement.

I accept the arguments of the tenant's advocate, that there could not have been a new tenancy agreement between the landlord EA and the purchaser as there was another tenancy agreement in place.

It was therefore not necessary to consider the tenancy agreement between EA and FPL and whatever their arrangement was as to rent payments during the lease back period as it was not relevant to this matter.

I have reviewed the accepted Offer to Purchase agreement, which was submitted in its entirety by the landlord. I find there is no request from the purchaser, FPL, to EA, in writing, to give the notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

I cannot find any evidence that FPL caused the Notice to be issued to the tenant.

Due to the above findings, I find that EA was responsible for the content on (or reason listed) and service of the Notice to the tenant and that FPL should be excluded from any further consideration in this matter.

I also grant the tenant recovery of her filing fee of \$100 paid for her application, pursuant to section 72(1) of the Act.

Due to the above, I find the tenant is entitled to a total monetary award of \$20,500, comprised of the equivalent of 12 months monthly rent for \$20,400, and the filing fee of \$100.

I order the landlord EA to pay this amount immediately to the tenant.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$20,500.

Should the landlord fail to pay the tenant this amount without delay, the tenant may serve the order on the landlord for enforcement purposes. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent of \$20,400 and recovery of the filing fee is granted. She has been granted a monetary order for \$20,500.

Respondent FPL has been excluded from any further consideration in this matter.

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 25, 2020

Residential Tenancy Branch