



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for:

- a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation; and
- recovery of the filing fee paid for this application.

The tenant, the respondent, who will also be referred to as "purchaser", the purchaser's translator, and the respondent's legal counsel attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally, to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all 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.

Preliminary and Procedural Matters-

At the outset of the hearing, the tenant confirmed receiving the purchaser's evidence. The purchaser denied receiving the tenant's evidence. In response to my inquiry, the tenant said her evidence and application for dispute resolution and notice of hearing

package were both sent by registered mail to the purchaser's address, which the purchaser confirmed at the hearing was a correct address. The tenant provided both tracking numbers.

I have used these tracking numbers and determined from the Canada Post website that both packages were collected by the purchaser, as he was the signatory for the collection.

I have put the tracking numbers on the style of cause page of this decision, for any ease of reference.

I therefore determined that the purchaser was properly served with the tenant's application package and evidence. I further determined that the tenant's documentary evidence would have no bearing in making a decision in this matter.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the purchaser and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective 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 submitted that this tenancy with another landlord began December 1, 2015, and ended on July 31, 2019. The monthly rent at the end of the tenancy was \$1,700.

The tenant's monetary claim is \$20,400 for 12 months' compensation for receiving a landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Notice), as it has not been used for the stated purpose listed on the Notice.

In support of this claim, the tenant testified that she received the Notice in person from her former landlord, which was dated on May 24, 2019, and listed an end of tenancy date of July 31, 2019. The tenant submitted a copy of the Notice, which was signed and dated by her former landlord. As a reason for ending the tenancy, the former landlord listed that 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.

The tenant submitted a copy of the Notice.

The purchaser was the respondent listed in this Decision.

The tenant said she moved out of the rental unit on July 31, 2019 pursuant to the Notice.

The tenant said that for a couple of months after she vacated, the new owner, the respondent did not move into the rental home. She then noticed that the home had been demolished and currently, a new home is being built on the lot.

The tenant said she noted a hydro pole was put up on the lot to prepare for the demolition and all the debris from her former rental home has been removed.

The tenant's additional evidence included a photo of the former rental home showing a hydro pole installed and a copy of the notice of rent increase from the landlord documenting that the monthly rent was increased to \$1,700 in 2018.

The relevant submissions of the respondent's legal counsel included-

Counsel submitted that the purchaser intended to move into and occupy the property when he purchased it and that he had assumed that the home was habitable as it was tenanted. After the possession date and in anticipation of occupying the home, the purchaser commissioned a detailed building inspection, which he thought was necessary due to the fragile medical conditions of both his children. However, the purchaser had a home inspection done and it was determined that the home was not suitable for occupation.

In particular, the inspection report showed issues which included an immediate roof servicing to prevent water ingress, a suspicion of asbestos, immediate repairs to walls and trim, numerous electrical safety concerns, plumbing pressure being dangerously high, a new hot water tank being required, bacterial growth and black and white mold visible inside numerous areas of the property.

Counsel submitted that the state of the home as reported caused the purchaser to determine that the home was not suitable for occupation, especially considering the health of his children.

Counsel said that as proof that the purchaser intended to move in, he purchased a stove for the home in June 2019.

Counsel referred to the building inspection report submitted into evidence.

Counsel submitted that extenuating circumstances prevented the purchaser from moving into the home, as the home was determined not to be livable.

Counsel also argued that the purchaser has met the legal definition of “occupy” as he has held the property for use at all material times. Counsel referred to a previous dispute resolution decision of the Residential Tenancy Branch (RTB). Counsel submitted that the previous decision found that the purchaser was not required to physically live in the rental unit and that leaving the property empty is permissible.

In response to my inquiry, the respondent said that he did not have a home building inspection during the purchase process, as there had been multiple offers on the home.

The respondent confirmed that the house had been torn down, in November 2019. The respondent said he received quotes from contractors and learned that the cost would be just as much to tear down and build a new home as to try and renovate the old home.

The respondent did not have copies of the quotes.

The respondent’s additional relevant evidence included the Contract of Purchase and Sale, showing the respondent as the purchaser, a copy of the receipt dated June 18, 2019, for the purchase of an electrical stove for \$120, and an environmental report.

Tenant’s relevant rebuttal included-

The tenant said she occupied the entire home when she lived there and said it was an older home and possibly not “up to par”.

The tenant said that the home was from 1972 and seemed logical that there would be asbestos.

The tenant said that she was not sure the home inspection report was for the same house, as the report showed a south-facing home, when the rental house was west-facing. The tenant said that the electrical box photo was not the one from the home and there was not a tub sink in the laundry room. The tenant said the layout of the house in the report was not an accurate representation of the actual home.

Counsel's request-

Counsel requested an adjournment of the hearing in order to have the building inspectors attend the hearing.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In the case before me, the undisputed evidence is that the tenant's previous landlord issued the tenant a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, for a move-out date of July 31, 2019. The tenant complied with the move-out date.

The landlord marked the Notice indicating that 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.

Section 51(2) 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.

Under section 51(3) of the Act, the purchaser may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

I accept the tenant's evidence, along with the purchaser's confirmation, that the rental unit has been demolished. The purchaser confirmed that the home was demolished in November 2019, which was within four months after the effective date of the Notice.

Additionally, the purchaser never moved into the rental home, despite requesting that the seller/original landlord issue the tenant a notice to end the tenancy.

I therefore find that the rental unit was not used for the stated purpose listed on the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, in this case, July 31, 2019.

In addressing counsel's submission that the respondent met the legal definition of the word "occupy", I find that he did not.

Residential Policy Guideline 2A states that the "implication" of occupy means to "occupy for a residential purpose".

The definition of "occupy" as provided in *Black's Law* dictionary defines "occupy" to include: to hold possession; and to hold or keep for use. The purchaser had the rental unit demolished.

While the purchaser may very well have "held" the residential property, the rental unit no longer existed due to the purchaser's actions. It would not be possible for him to hold possession of something that no longer existed.

As to counsel's arguments that extenuating circumstances prevented the purchaser from using the rental unit for the stated purpose, I find they did not. Rather, I find it was the purchaser's lack of due diligence in commissioning a home/building inspection prior to the sale being finalized that prevented finding out whether the home was suitable for occupation. Having said that, I find the landlord submitted insufficient evidence that the costs of renovation cost the same as building a new home.

I do not find the purchaser's explanation that he did not have a home inspection as a condition of sale prior to the finalization of the sale due to the multiple offers on the property to be reasonable.

Residential Tenancy Policy Guideline 50 provides examples of extenuating circumstances, such as death of the close family member intending to occupy the rental unit.

I therefore find on a balance of probabilities and from my interpretation of the Policy Guideline 50 that the purchaser failed to provide sufficient evidence that extenuating circumstances prevented him from using the rental unit for the stated purpose.

I therefore find the tenant is entitled to monetary compensation equivalent to 12 months' rent.

As a result, I grant the tenant a monetary award of \$20,400 as requested, the equivalent of monthly rent of \$1,700 for 12 months.

I also grant the tenant recovery of her filing fee of \$100.00, as she has been successful in her application.

To give effect to this award, I grant and issue the tenant a final, legally binding monetary order.

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.

As the purchaser himself confirmed that the rental unit was not being used for the stated purpose for at least 6 months from the effective date of the Notice, I determined that it was not necessary to adjourn the hearing, as requested by the legal counsel, or exclude the tenant's testimony.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent of \$20,400 and recovery of the filing fee of \$100 for a total of \$20,500, is granted and she has been granted a monetary order for that amount.

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 13, 2020

Residential Tenancy Branch