



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The tenant and the landlord's agents (landlords) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties did not raise any issues regarding receipt of the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary 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.

Issue(s) to be Decided

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

Background and Evidence

I was not provided a copy of the written tenancy agreement and it was not clear if one had been prepared for this tenancy.

The tenant said that the tenancy began approximately four years earlier and the landlord said the start date was October 2016.

The tenant said that the monthly rent at the end of the tenancy was \$550 and that he vacated the rental unit on October 31, 2019.

The tenant's monetary claim is \$6,600, the equivalent of 12 monthly rent payments. The claim is based upon receiving the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) that has not been used for the stated purpose listed on the Notice.

In support of this claim, the tenant testified that he received the Notice from the landlord, which listed an end of tenancy date of November 30, 2019. The tenant submitted a copy of the Notice, which was signed by his former landlord. As a reason for ending the tenancy, the 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 said he moved out of the rental unit on October 31, 2019, earlier than the date listed on the Notice, at the request of the purchaser, RL. The tenant submitted a copy of the 1 page, hand written request from RL, which, in part, informed the tenant that he had purchased the property that the tenant was renting and that he required possession by November 1, 2019, if possible.

The tenant submitted a copy of a text message from a neighbour of the residential property informing him that the purchaser "ended up not buying" the home. The tenant also submitted a copy of the title search showing that the landlord was still the listed owner.

Landlords' response-

The landlord's agents, the son and daughter-in-law of the landlord, submitted that the landlord put the residential property for sale and that RL purchased the home. The

landlord said that the tenant actually helped in showing and facilitating the sale of the home.

The home was sold to RL, through a private sale, as no mortgage was owed, and that RL bought the property to use as his residence.

The landlords explained that RL ultimately did not follow through with the purchase of the home, as the sale of his existing home fell through. In further explanation, the landlords said that the purchaser of RL's existing home was diagnosed with terminal cancer and did not want to leave his wife with a mortgage. This resulted in RL allowing that purchaser to back out of the sale, and in turn, the landlord allowed RL to back out of the sale of the residential property.

The evidence shows the home is still for sale and the landlords said that RL would still like to purchase the home at some point.

The landlord's relevant evidence included the purchase agreement between the landlord and RL.

In response to my inquiry as to the written request of RL to the landlord to give the Notice to the tenant, the landlords responded that the tenant knew RL was buying the property and the tenant received RL's written notice to vacate.

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 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 November 30, 2019. The tenant complied with RL's request and that he moved out a month early. This request was given to the tenant in a handwritten note from RL.

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.

The evidence in this matter shows that RL, the purchaser, gave the tenant a handwritten note, dated September 28, 2019, informing the tenant he required vacant possession. The evidence showed that the completion date for the sale of the home was December 1, 2019.

As there was no evidence that the purchaser, RL, had asked the landlord, in writing, to give the tenant the Notice, I find the landlord had no ground under section 49 of the Act to issue the Notice.

The landlord ought to have waited for the written request from RL to her, as the seller, prior to issuing the Notice, as she was required to do so under section 49 (5) (c), or allow RL to complete the sale and issue his own Notice to the tenant. Only an existing landlord, as a seller, can use this reason on the Notice, but only after a written request from the buyer.

As I have found that not to be the case, for the above reasons, 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 \$6,700 as requested, which is the equivalent of monthly rent of \$550 for 12 months, or \$6,600, and \$100 for the cost of filing this application.

I grant and issue the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$6,700.

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 \$6,600 and recovery of the filing fee of \$100 is granted and he has been granted a monetary order for the amount of \$6,700.

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: May 22, 2020

Residential Tenancy Branch