



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GWB CONTRACTING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

On March 2, 2020, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement. On March 13, 2020 the Tenants amended their application to change the amount of compensation being claimed.

The matter was scheduled as a teleconference hearing. The property owner (“the Landlord”) and Tenants were present at the hearing. The Landlord was assisted by his realtor. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The Landlord and Tenants were provided with an opportunity to ask questions about the hearing process. The parties provided affirmed testimony and were provided with the opportunity to present oral testimony and to make submissions during the hearing. The Landlord and Tenants confirmed that they have exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Are the Tenants entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The Landlord and Tenants provided testimony agreeing that the tenancy began on February 1, 2019 as a one-year fixed term tenancy that was to continue until February 1, 2020. Rent in the amount of \$1,500.00 was due to be paid to the Landlord by the first

day of each month. The Tenants paid a security deposit of \$750.00 and a pet damage deposit of \$250.00 to the Landlord.

The Landlord and Tenants testified that the tenancy ended when the Tenants vacated the rental unit on January 1, 2020 after receiving a Two Month Notice to End Tenancy for Landlord's Use of Property from the Landlord ("the Two Month Notice").

The Tenants provided a copy of the Two Month Notice. The Two Month Notice is dated November 4, 2019 and has an effective date of February 1, 2020. The reason cited for ending the tenancy is:

The rental unit will be occupied by the Landlord or the Landlord's close family member spouse or a close family member.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

The Tenants accepted the Two Month Notice and moved out of the rental unit. The Tenants testified that the Landlord issued the Two Month Notice in bad faith because the Landlord did not move into the rental unit and use the property for a six-month period.

The Tenants testified that the Landlord sold the rental unit within three weeks of when the Tenants vacated the rental unit. The Tenants testified that their friends who also live at the residential property informed them that the rental unit had been sold. The Tenants provided a copy of an advertisement for the rental unit that shows the unit is sold.

The Tenants provided a copy of text messages from October 30 and October 31, 2019 between the Landlord and the Tenants. The text messages from the Landlord state:

"Looking at Jan 1st as we have to be out of our place by then."

"...I have to submit proper notice here by months end as well. All in all, I'm not happy I have to move either and I understand it sucks for you as well..."

"...I'll be by tomorrow at some point to put the official notice as I am required..."

“...for some reason I thought Jan 1st was the end of lease term. I’ll have to sort out my situation as I committed to Jan 1st. Feb 1st is the end of the lease. You don’t have to be out until then. Terribly sorry.”

The Tenant is seeking compensation of \$18,000.00 which is twelve months rent payable under the tenancy agreement.

In reply, the Landlord provided testimony confirming that he issued the Two Month Notice to the Tenants on November 4, 2019.

The Landlord testified that he was trying to sell the rental unit while the Tenants were still living in the unit. The Landlord testified that the rental unit was difficult to show because there was some damage to the unit, and it had been smoked in.

The Landlord testified that he sold the unit he was living in and issued the Two Month Notice to the Tenants with the intent to live in the rental unit and clean it up and make it more presentable to sell. When the Landlord was asked if he ever moved into the rental unit he replied “no”.

The Landlord testified that he sold the rental unit with a completion date of February 28, 2020.

The Landlord testified that he presented a mutual agreement to end tenancy document to the Tenants on November 5, 2019. The Landlord and Tenants signed the mutual agreement to end tenancy with an effective date of February 1, 2020.

The Landlord was asked to explain the purpose of having the Tenants sign a mutual agreement to end tenancy one day after he served them with the Two Month Notice that has the same effective date. The Landlord testified that he spoke to a lawyer and an information officer at the Residential Tenancy Branch and was informed that he could have the Tenants sign a mutual agreement to end tenancy. The Landlord testified that the purpose was to avoid a situation where the Tenants would seek compensation against him. The Landlord provided a copy of the mutual agreement to end tenancy.

The Tenants testified that they signed the mutual agreement and they stated that they believed the mutual agreement was just further validation that the tenancy was ending on February 1, 2020.

The Landlord was provided an opportunity to make submissions on whether or not there were circumstances that prevented the Landlord from using the rental unit for the stated purpose for at least 6 months duration after the effective date of the notice.

In reply, the Landlord testified that the rental unit had animals and was smoked in and due to not being able to show the unit, he was forced to issue the Two Month Notice.

Analysis

Section 5 of the Act provides that Landlords and Tenants may not avoid or contract out of this Act or the regulations and any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 49 of the Act provides circumstances where a Landlord can end a tenancy for Landlord use of property.

Section 49 (3) of the Act provides that a Landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(5) of the Act provides that a Landlord may end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, and:

- 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 on one of the following grounds:
- 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;
- 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 provides:

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. [my emphasis]

(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 # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a Landlord to pay compensation to a Tenant when a Landlord ends a tenancy for Landlords use of property. The Guideline provides that a Landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Extenuating Circumstances

With respect to extenuating circumstances, the Guideline #50 provides the following:

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.

The Guideline also provides 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 Guideline provides that 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*

Compensation under section 51 of the Act

Based on all of the above, the evidence and testimony from the Landlord and Tenants, and on a balance of probabilities, I find as follows:

The Landlord issued the Two Month Notice under section 49(3) of the Act. Once a notice to end tenancy is served by a Landlord, a Landlord cannot unilaterally rescind the notice. I have reviewed the mutual agreement to end tenancy document and I find that it does not provide any statement that the Two Month Notice is rescinded or that the Tenants are waiving their right to compensation under the Act. I accept the Tenants' testimony that they believed that the mutual agreement was just further validation that the tenancy was ending on February 1, 2020.

I find that the Landlord's action of having the Tenants sign a mutual agreement to end tenancy one day after issuing the Two Month Notice is a clear attempt by the Landlord to avoid obligations under section 51 of the Act. As stated by the Landlord in the hearing; the purpose of the mutual agreement was to avoid a situation where the Tenants would seek compensation against him.

I find the Landlord failed to use the rental property for the reason stated within the Two Month Notice for a six-month duration. The Tenants moved out of the rental unit on January 1, 2020, and the Landlord sold the unit less than two months later on February 28, 2020. Pursuant to section 51(2) of the Act, the Landlord must pay the Tenants the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I award the Tenants a monetary order in the amount of \$18,000.00.

I have considered section 51(3) of the Act and the policy guideline regarding compensation and extenuating circumstances. I find that there is insufficient evidence from the Landlord to support that there are extenuating circumstances present making it unjust for the Landlord to have to pay compensation. The Landlord never moved into the rental unit and issued the Two Month Notice with the purpose of making it more presentable to sell.

I find that there are no extenuating circumstances making it unjust for the Landlord to pay compensation.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$18,100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord did not use the rental unit for the purpose stated within the Two Month Notice for a six-month duration. The Landlord must pay the Tenants the amount of 12 months' rent payable under the tenancy agreement.

The Tenant is granted a monetary order in the amount of \$18,100.00 for the breach under section 51 of the Act and the cost of the filing fee.

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: July 20, 2020