



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation under section 51(2) of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

The hearing on May 22, 2020 was adjourned until today to extend the time for the respondent to prepare his evidence and for the tenant to respond to the respondent's evidence.

Both parties attended the hearing. The respondent was assisted by lawyer NE. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service of the Application and the Evidence (the materials)

The applicant affirmed he served the materials, including a copy of the tenancy agreement. The respondent affirmed she received the materials not including a copy of the tenancy agreement.

The applicant affirmed he received the evidence from the respondent.

I find the materials, excluding the tenancy agreement, were properly served in accordance with section 89 of the Act.

Issues to be Decided

Is the tenant entitled to:

01. a monetary award for compensation under section 51(2) of the act?

02. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the parties; it is their obligation to present the evidence to substantiate the application.

The tenants were evicted from their rental unit so the respondent, the purchaser of the rental unit, could move in. The tenants are claiming the respondent did not occupy the rental unit for at least six months after May 31, 2019 and therefore owes them compensation equivalent to 12 months of rent. The respondent claims that she did move into the rental unit and occupied it from June 01, 2019 to January 01, 2020.

The tenant affirmed the tenancy started on June 01, 2016 and ended on May 31, 2019. Monthly rent at the end of the tenancy was \$1,400.00, due on the first day of the month.

The respondent did not dispute the tenancy's details provided by the tenant, but affirmed she purchased the rental unit on May 31, 2019 and she is not aware of the tenancy's details.

The tenant affirmed receiving a Two Month Notice to End Tenancy for Landlord's Use (the Notice) on March 05, 2019. A copy of the Notice was submitted into evidence. It states:

Reasons for this Two Month Notice to End Tenancy (check the box that applies)

- all 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.

The effective date of the Notice was May 31, 2019.

The respondent affirmed on June 01, 2019 she moved in to the property and did no renovations.

The tenant submitted an advertisement for the rental unit. The tenant affirmed this advertisement was available on October 14, 2019 and it states: "Monthly rent: 2,000. Available: Now".

The respondent stated the occupancy date was an error made by her agent, the rental unit should have been listed for occupancy on January 01, 2020. Her agent instructed her to list it 2,5 months early because the strata corporation needs to approve the new tenant. The tenant affirmed there is no such a requirement and that the respondent did not produce any document to prove this requirement.

The tenant submitted into evidence an email from the real estate agent in reply to the listing. It states:

Thank you for the email. We can arrange a showing for you on Sunday at 1:15pm.

Would you be able to make it?

TO answer your questions,

-Is it possible to rent it for a part month starting mid November? Or would I need to drive down this weekend to secure for the month of November.

-It depends on the background, credit and reference check. If you are still interested after viewing and we will send the rental application form to you.

-Is the unit currently occupied by a tenant or the landlord? So I would need to wait for them to move out?

-Landlord

The respondent affirmed twice that the above referenced email is vague and does not conclude that anyone can move in before December 01, 2019.

The tenant submitted into evidence an email exchange on November 16 and 17, 2019 from a former neighbour. It states:

-The noise stopped around the middle of July or thereabouts & we left on the 23rd, but I know she was trying to rent it recently and she was asking around \$1875, lot more money, I'm pretty sure it's rented now.

-Do you know anybody on that floor if they know if she's living there or it's rented?

-I'm pretty sure it's rented.

The respondent affirmed this email is hearsay evidence, the neighbour who sent the email was not watching the property all the time and the conclusions of the neighbour are assumptions.

The respondent moved out of the rental unit on January 01, 2020. Airline tickets for the respondent leaving Canada on January 01, 2020 were submitted into evidence.

The respondent affirmed the rental unit was not ever rented. The respondent affirmed she does not have financial means to pay the compensation the tenant is asking for.

The tenant affirmed the respondent did not provide any evidence she was living in the property from June 01, 2019 to January 01, 2020. There is no utility bill and this would be an easy evidence to provide. The tenant affirmed the respondent is acting in bad faith.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 49(5) of the Act states:

- (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 provides that the purchaser, in addition to the amount payable under subsection (1), must pay an amount that is 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.

The parties offered conflicting verbal testimony regarding the occupancy of the property by the respondent after the tenancy ended. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find the emails and listing prove the rental unit was not occupied by the respondent from June 01, 2019 to December 01, 2019. I reach this finding based on:

1. the email from the neighbour who lives by the rental unit affirming there was renovation construction noise around July and the rental unit was rented during the month of November.
2. the listing indicates the rental unit was available for rent on October 14, 2019
3. the rental agent email indicates it is possible to start a tenancy in mid-November.

The respondent's testimony about the emails and the listing absolutely lacks an air of credibility.

As such, I find the respondent did not occupy the property for at least six months after it was purchased, breaching section 49 of the Act.

Based on the coherent and undisputed tenant's testimony, I find the monthly rental payment was \$1,400.00.

As such, the tenant is entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenant a monetary award in the amount of \$16,800.00.

As the tenants were success with their application, pursuant to section 72 of the Act, I authorize her to recover the \$100.00 filing fee.

Thus, the tenant is entitled to a monetary award in the amount of \$16,900.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenants a monetary award in the amount of \$16,900.00.

The tenant is provided with this order in the above terms and the respondent must be served with this order as soon as possible. Should the respondent 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: July 14, 2020

Residential Tenancy Branch