



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order equivalent to 12 months of rent, pursuant to section 51 of the Act, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary issue

At the outset of the hearing PS, agent for the real estate named as a respondent stated they should not have been named as a respondent. PS stated they were simply acting in their role as a real estate agent when the buyer requested that they issue the Notice. PS stated they have no control when the purchaser does not comply with the Act.

In this case, I find the real estate company should not have been named as a respondent, they were simply issuing the Notice at the purchaser's request. Therefore, I have removed the real estate named as a respondent from this hearing as they are not responsible for the actions of the purchaser. PS was excused from the hearing.

Issue to be Decided

Is the tenant entitled to a monetary order, pursuant to section 51 of the Act?

Background and Evidence

The tenant testified that they had lived in the rental unit for three years. Rent in the amount of \$1,050.00. The tenant stated that the rent did increase during the tenancy; however, at this time does not remember the exact amount.

The parties agreed that the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property, (the "Notice") issued on October 18, 2019, with an effective vacancy date of January 1, 2020. The tenant vacated the premises in accordance with the Notice.

The reason stated in the Notice was:

- All of the condition 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 close family member intends in good faith to occupy the rental unit.

The tenant testified that in March 5, 2020, they were driving by the rental premise and they saw a for rent sign in the window. The tenant stated that this was upsetting as they did not want to move from the rental unit and would have stayed if they new the purchaser was going to rent the premise. The tenant stated that the purchaser did not occupy the premise as required by the Notice.

The landlords testified they were downsizing from their current residence when they signed an agreement to purchase the property in September 2019, and they took possession of the subject property on January 9, 2020.

The landlords testified that had the seller issue the Notice to the tenant ending the tenancy on January 1, 2020. The landlords stated that they completed some renovation to make the premise suitable for their use. The landlords stated that the male landlord has been staying in the lower unit while making repairs, which was completed on or about June 14, 2020.

The landlords testified that they decided not to sell their current property due to three adjacent neighbours having their homes for sale between November 2019, and February 2020, which were not selling. The landlords stated that because of this they decided not to sale their current property and remain in their home for a few more years.

The landlords testified that they did not move into the subject property and they decided to list it for rent in March 2020 to cover the mortgage and other expenses of the property.

Analysis

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

Tenant's compensation: section 49 notice

51 (2) 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.

(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.

I am satisfied that the landlord did not use the premise for the stated purpose as it was admitted that they started to seek a renter in March 2020, when they advertised the rental unit. I find the landlord has breached the Act.

I have also considered if in my opinion, extenuating circumstances prevented the purchaser from using the rental unit for that stated purpose. In this case, I do not find the purchaser has presented any evidence that in my opinion prevented them from using the premise for the stated purpose.

The purchaser purchased the property without having sold their current residence. The fact the real estate market may not have good at that time and they decided not to sell their property, remain in their residence, and rent out the subject property was their personal choice. Poor planning is not an extenuating circumstance. The landlord could have waited to end the tenancy if the sale of their home was a deciding factor to move into the subject premise. Rather, the landlord had the Notice issue and the tenant was displaced from their residence.

Further, the landlord could have moved into the rental unit, while attempting to sale their home or they could have rented out their home, if they were truly intending to down. While I accept the purchaser may have on occasion stayed in the rental premise, this was simply for convenience while making renovations; renovations was not the purpose of the Notice being issued.

In light of the above, I find the landlord has breached the Act and I find the tenant is entitled to receive the equivalent of 12 months rent. While the tenant may have received a rent increase during their tenancy, that amount was not given to me by the end of the hearing. I have used the rent of \$1,050.00 to determine the amount owed. Therefore, I find the tenant is entitled to a monetary order($\$1,050 \times 12 = \$12,600$ + \$100 = \$12,700.00) in the amount of **\$12,700.00**, this includes the recovery of the \$100.00 cost of the filing fee. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application is granted as shown above.

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 27, 2020

Residential Tenancy Branch