



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenant seeks to recover eleven months of rent as compensation for his monetary loss or other money owed resulting from an alleged wrongful eviction. By amendment, acknowledged to have been received by the landlord, he also seeks recovery of a \$1500.00 security deposit which the landlord still holds.

The landlord SB and the tenant's representative BN attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant been wrongfully evicted? If so what compensation or monetary loss has he suffered? Is he entitled to recover his security deposit? Is he entitled to the doubling penalty imposed by s. 38 of the *Residential Tenancy Act* (the "RTA")?

Background and Evidence

The rental unit is a two-bedroom townhouse. The original tenancy started in December 2019 and, in June 2020 the parties renegotiated it. There is a written tenancy agreement in the standard Residential Tenancy Branch ("RTB") form evincing a one year fixed term tenancy from June 1, 2020 to May 31, 2021 at a monthly rent of \$1500.00. The landlord received and holds a \$1500.00 security deposit.

At the end of June the landlord wrote the tenant giving him 30 days notice to vacate the property pursuant to a term in the addendum of the tenancy agreement. The term stated, "property is currently listed: minimum 30 days' notice will be provided." The landlord states and the tenant's representative does not dispute that the intention of that term was that in the event the landlord sold the property the tenant would leave on thirty days notice.

Based on this document the tenant agreed to move out by July 15. The July rent payment was waived.

At hearing the landlord testified that at the time he gave the notice he had accepted an unconditional offer to purchase the property. He testified that the sale closed on August 4, 2020 and that he is no longer the registered owner. He does not know whether or not the purchaser is residing in the property

When BN pointed out to him that the property continued to be shown to prospective purchasers all through July, he stated that his realtor was in charge of that and she was looking for back-up purchasers in case the original purchase fell through.

Analysis

The Ending of the Tenancy

While the parties have put great reliance on the brief clause in the addendum to their tenancy agreement, neither appear to have noticed clause 14 of the actual agreement. It is a mandatory term on all tenancy agreements and enshrines the provisions of Part 4, Division 1 of the *RTA*, stating:

14. ENDING THE TENANCY

1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month. [For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]

2) This notice must be in writing and must

- a) include the address of the rental unit,
- b) include the date the tenancy is to end,
- c) be signed and dated by the tenant, and
- d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.

3) If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the Residential Tenancy Act.

4) The landlord may end the tenancy only for the reasons and only in the manner set out in the Residential Tenancy Act and the landlord must use the approved notice to end a tenancy form available from the Residential Tenancy Branch.

5) The landlord and tenant may mutually agree in writing to end this tenancy agreement at any time.

6) The tenant must vacate the residential property by 1 p.m. on the day the tenancy ends, unless the landlord and tenant otherwise agree.

(emphasis added)

These terms are mandatory terms in every residential tenancy agreement. Parties cannot contract out of the mandatory terms. The addendum clause permitting the landlord to end the tenancy on 30 days notice is in conflict with clause 14 and is of no effect.

It was the landlord's initiative to end the tenancy and it therefore fell to him to follow the law on how to do so, particularly, s. 49(5) of the *RTA*, which 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.

In the circumstances of this case had the landlord followed the law the tenant would have been given a two month Notice to End Tenancy in the approved form, based upon the sale and upon the mandatory precondition that the landlord had a written notice form the purchaser that the purchaser or a close family member of the purchaser intended in good faith to occupy the property. The mandatory Notice would also have informed the tenant of his right to challenge the Notice and his rights under ss. 50 and 51 of the *RTA*, including: his right to be compensated for the equivalent of one month's rent, his right to end the tenancy earlier, on ten days notice, and received a rebate of rent accordingly, and his right to claim the equivalent of twelve months rent against the landlord or the purchaser should steps not have been taken, within a reasonable period after the effective date of the notice, to accomplish the sale or if the rental unit was not occupied by the purchaser or a close family member for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

There is no question of setting aside the landlord's 30 day notice and returning possession of the rental unit to the tenant. That is not what the tenant claimed and to do so might significantly interfere with the lawful rights of an innocent, non-party, the purchaser.

The tenant has not shown any loss in this case. He has not alleged moving costs nor that he was forced into lesser accommodation at greater cost. He is living with his partner BN.

In his monetary order worksheet he claims 11 months rent and appears to base that claim on the assertion the landlord has not sold the property because it continued to be listed and shown through July. The landlord has testified under oath that the property was sold under an unconditional contract of purchase and sale entered into before June 29, 2020 and that the sale completed and possession passed to the purchaser on August 4. I accept that sworn testimony and the landlord's explanation for the continued listing.

The tenant is free to conduct a title search or other investigation and if he determines there was no such sale, he is free to bring an application for review of this decision based on fraud and, if successful, to apply against the landlord for the twelve month penalty.

The tenant is also free to determine whether or not the purchaser or a close family member of the purchaser is occupying the rental unit or occupies it for at least six months following the possession date of August 4, 2020. If the purchaser has failed to do so the tenant may apply for the twelve months rent penalty referred to above. I grant him any leave to re-apply that might be needed to do so.

Had proper notice been given by the landlord in my view the tenant would have been entitled to know the name(s) of the purchaser(s) and I find that if the tenant now makes that request of the landlord, the landlord is duty bound to give up the name(s) to him.

In result the tenant's application for eleven months rent is dismissed, subject to the comments and leave granted above.

The Security Deposit

Section 38 of the *RTA* provides that once a tenancy has ended and once the tenant has provided the landlord with his forwarding address in writing, the landlord has a fifteen day period to either repay the deposit money or apply to retain it. A landlord who fails to do either within that fifteen day period will be penalized by having to account to the tenant for double the deposit.

In this case the landlord has received a number of emails from the tenant requesting the deposit back. However, the tenant has not provided the landlord with the required "forwarding address in writing." Even if the address given by the tenant in his

application could be seen to be a forwarding address in writing, the tenant inserted this rental unit address as his address in his application.

I find that the landlord's obligation to return or apply against the deposit has not yet arisen. I also find and I declare that the tenant may provide the landlord with his forwarding address in writing by email to the landlord at the email address shown in the application and confirmed by the landlord at hearing. On receipt the landlord will then be governed by the provisions of s. 38, summarized above. If the deposit is not repaid or the landlord fails to apply against it within the fifteen day period, the tenant is free to re-apply for the deposit and for the doubling penalty and I grant him any leave necessary for him to do so.

Conclusion

The tenant's claim for eleven months' rent is dismissed, but with leave to re-apply in accordance with the terms above.

The tenant's claim for recovery of the \$1500.00 security deposit is dismissed, but with leave to re-apply in accordance with the terms above.

I award the tenant recovery of the \$100.00 filing fee paid for this application. He will have a monetary order against the landlord in the amount of \$100.00.

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: September 24, 2020

Residential Tenancy Branch