



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The tenants applied 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 of the *Act*.

Both parties attended the hearing. The purchaser was assisted by advocate HK (the purchaser). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Are the tenants 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 tenant affirmed the tenancy started in February or March 2013 and ended in late April 2019. Monthly rent at the end of the tenancy was \$850.00, due on the first day of the month. The tenant received the return of the security deposit of \$425.00. The tenancy agreement was submitted into evidence.

Both parties agreed the property is a house on the main floor and two basement rental suites. The tenant lived in the east basement suite.

The purchaser stated the rental unit was purchased on April 31, 2020 and the possession was on June 01, 2020. The previous owners allowed the purchaser to move in two weeks earlier, so he moved in around mid-May 2020.

A copy of the contract of purchase and sale was submitted into evidence. It states:

The buyer will have vacant possession of the Property at 10AM on June 1 ~~crossed~~
~~May 2~~] (Possession Date) OR, subject to the following existing tenancies, if any:
Vacant possession of the house including both suites.

The purchaser said he did not know there was a tenant in the east basement suite. The seller's realtor asked the purchaser to sign a document called 'tenant occupied property buyers notice' (buyers notice). The seller's realtor explained to the purchaser that the seller's brother was living in the east basement rental suite and he was not a tenant. The purchaser was under stress when he signed the buyers notice and does not speak English well. Thus, he signed the buyers notice but did not understand there was a tenant renting the east basement rental unit. The purchaser's realtor also did not know there was a tenant in the rental unit.

A copy of the buyers notice was submitted into evidence:

WHEREAS:

- A. The undersigned (the "Buyer(s)") and the Seller(s) have entered into the Contract of Purchase and Sale dated March 18, 2020 in respect of the purchase and sale of the above-noted Property (the "Purchase Agreement").
- B. All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied or waived in accordance with the Purchase Agreement.
- C. The Property is currently rented to tenant(s).

D. The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation, intend in good faith to occupy the Property. NOW THEREFORE in accordance with Section 49 of the Residential Tenancy Act, the Buyer(s) hereby request that the Seller(s), as landlord, give notice (the "Tenant Notice") to the tenant(s) of the Property pursuant to the Residential Tenancy Act terminating the tenancy and requiring the tenant(s) to vacate the Property by 1:00 pm on May 31, 2020.

The tenant affirmed the buyers notice was served to him in late March, 2020 and he left the rental unit in late April 2020 because he assumed he had to vacate the rental unit.

The tenant submitted an advertisement for the rental unit available in early May, 2020 stating: "Available from June 1st 2020". In mid-May the tenant saw an updated advertisement for the same rental unit stating it is available immediately.

The purchaser said his intention was to live in the house and the two basement suites with his family (purchasing couple, one adult child, one under-age child, and the purchaser father). However, due to financial difficulties, the purchaser decided to rent the two basement suites.

The purchaser only learned there was a tenant in the east basement rental unit when he received the notice of hearing in late May 2020. The purchaser tried to contact the tenant, but the tenant refused to communicate with him. The tenant affirmed he was contacted by the purchaser's realtor and he refused to talk with him.

The purchaser stated as soon as he received the notice of hearing he removed the advertisement for the rental unit and his adult child (HK) moved in to the east basement rental unit. The purchaser submitted into evidence three documents indicating HK has been living in the east basement rental unit since late May 2020:

- driver's license;
- owner's certificate of insurance and vehicle license This document was printed on August 12, 2020; and
- university registration.

The purchaser also explained the driver's license and owner's certificate do not indicate east basement but only basement because ICBC does not accept east basement as a valid address.

The tenant is seeking for a compensation in the amount of \$10,200.00 (12 times the monthly rent payments of \$850.00).

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.

Sections 49(2) and (3) of the Act state:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(3) 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.

The notice received by the tenant is not a valid notice pursuant to section 49, namely RTB form 37.

Section 52 of the Act states:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e) when given by a landlord, be in the approved form.

As the tenants did not receive a valid 2 month notice to end tenancy for landlord's use of the property under section 49 of the Act that complies with section 52 of the Act, I find

the purchaser has not breached section 49 of the Act. Thus, the tenants are not entitled to the compensation they are seeking.

As the tenants were not successful with their application, pursuant to section 72 of the Act, they must bear the cost of the filing fee.

Conclusion

I dismiss the tenants' application without leave to reapply.

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: October 01, 2020

Residential Tenancy Branch