



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing, reconvened from an earlier hearing on July 15, 2020, dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The named respondent HCC was assisted by their property agent JS.

As all parties were present service was confirmed. The parties each testified that they were duly served with the respective materials. Based on the testimonies I find each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlords?

Background and Evidence

This periodic tenancy began in February 2018 and ended on April 30, 2020 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated February 11, 2020. The monthly rent was \$1,524.89 payable on the first of each month. The rental unit is a suite in a multi-unit building.

The 2 Month Notice was issued by the previous landlord, HCC. The reason provided on the Notice for the tenancy to end is that:

All of the conditions for 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 a close family member intends in good faith to occupy the rental unit.

The tenant submitted into evidence a copy of the 2 Month Notice which provides the names of the respondent, PKS as the purchaser of the property.

The former landlord HCC testified that they issued the 2 Month Notice as they received from the purchaser PKS a Buyers Notice for Vacant Possession of the rental unit dated February 11, 2020. The former landlord HCC issued the 2 Month Notice, provided the tenant with compensation in the amount of one month's rent by allowing them to withhold rent for April, 2020 and oversaw the end of the tenancy. HCC testified that they have no information about whether the purchaser or any of their close family members have actually occupied the rental unit since the end of the tenancy.

Prior to the tenancy ending the tenant submits that they discovered the rental unit being advertised for rent. The tenant contacted the individual who posted the advertisement, confirmed it was the respondent PKS and the suite in question was the rental unit. The rental unit was being offered for monthly rent in the amount of \$2,200.00. The tenant submitted into evidence copies of correspondence between the parties. The documentary evidence shows that the rental unit began being advertised as available on February 1, 2020 and that as of March 22, 2020, the purchaser represented to the tenant that the suite was still available for rent.

The purchaser testified that they posted the advertisement in order to gain information about the rental market but had no intention of renting out the suite. The purchaser said that they did not intend to rent out the suite as they would have incurred costs and lost out on first-time home purchaser incentives. They submit that they explored the possibility of renting out the suite but ultimately chose to reside in the suite themselves. The purchaser submitted into evidence copies of recent utility bills in their name for the rental address, their driver's license with the rental unit address listed, and delivery orders for furniture and items to the rental unit as evidence of their residence in the suite.

The tenant says that they have no information about who is residing in the rental unit at this time but, based on the earlier correspondence with the purchaser where they clearly represent that the rental unit is available for rent, believe the 2 Month Notice was not issued in good faith and seek a monetary award in the equivalent of 12 Month's Rent under the tenancy agreement.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* provides the circumstances when a tenant who has received a notice to end tenancy under section 49 [landlord's use of property] may be entitled to compensation. The relevant portions of the section states that a landlord or, the purchaser who asked the landlord to give the notice must pay the tenant an amount that is equivalent to 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 agree that a valid 2 Month Notice was issued by the former landlord. The former landlord testified that they issued the notice to end tenancy pursuant to section 49(5) of the *Act* which provides that:

- (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.

The parties agree that the landlord entered into a good faith agreement to sell the rental unit to the purchaser and that they were requested to issue a 2 Month Notice by the purchaser in a Buyers Notice for Vacant Possession. The Buyers Notice states that the purchaser or their close family member intends, in good faith, to occupy the rental unit.

The purchaser testified that they now occupy the rental unit and presented documentary evidence by way of various utility bills and identification providing the rental unit as their address.

I do not find the purchaser to be a credible witness. I found their testimony to be evasive, rambling and inconsistent with their own earlier statements as well as the documentary evidence and the actions of a reasonable person under the circumstances. It is undisputed that the purchaser advertised the rental unit as available to rent and went so far as to engage in email correspondence stating that the suite was available. This is significantly more than a purchaser of a property ascertaining market information or testing the waters. I find their explanation that they were simply obtaining information to be unconvincing and not reasonable given the level of effort undertaken to post an advertisement and engage in correspondence representing the suite as available. The conduct of the purchaser is inconsistent with someone who intends to occupy the rental unit themselves.

While the purchaser has submitted utility bills and identification providing the rental unit as their mailing address, I find this is not sufficient to establish that they are occupying the rental unit. It is open for anyone to instruct utility companies to set a name on an account or a mailing address for bills. I further note that waybills for furniture delivered to the rental unit does not establish that the purchaser occupies the suite as it a rental unit can simply be rented out as a furnished suite.

I find the testimony of the purchaser stating that they occupy the rental unit as they did not want to lose out on home-purchaser incentives to be unconvincing and not consistent with their earlier actions or correspondence. It is clear that the risk of losing these incentives did not deter them from advertising the rental unit or engaging in communication to offer the suite to potential occupants.

Based on the totality of the evidence I find that the tenant has provided sufficient materials to demonstrate on a balance or probabilities that the rental unit is not being used for the reason provided on the 2 Month Notice. I find that the sequence of the advertisement posted by the purchaser on February 1, 2020 and their correspondence of March 22, 2020 stating unequivocally in response to a question of whether the suite is available that, "It is still available" to be sufficient to determine that the purchaser had no intention to occupy the rental unit but intended to rent it out. I am satisfied with the tenant's submission that the rental unit is not being used for the purposes listed on the 2 Month Notice.

Therefore, in accordance with section 51(2) of the Act, as I have found that steps have not been taken to accomplish the purpose identified in the 2 Month Notice, I find that the tenants are entitled to a monetary award in the amount of \$18,298.68, 12 times the monthly rent payable under the tenancy agreement.

Section 51(2) provides that "the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant". As I find that the purchaser was the one who issued the Buyers Notice for Vacant Possession requesting the 2 Month Notice be issued and they were the one who failed to take reasonable steps to accomplish the purpose identified, I issue a monetary award against the purchaser.

As the tenants were successful in their application they are entitled to recover their filing fee from the purchaser.

Conclusion

I issue a monetary order in the tenants' favour as against the purchaser in the amount of \$18,398.68. The purchaser must be served with this Order as soon as possible. Should the purchaser 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: November 12, 2020

Residential Tenancy Branch