



Dispute Resolution Services

Page: 1

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 in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement, pursuant to section 51(2);
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The two respondents are the rental unit's landlord and the purchaser of the rental unit. The landlord was assisted by advocate RG. The purchaser was assisted by translator HJ. Witness SG for the landlord also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service of Documents

Both respondents confirmed receipt of the tenants' notice of hearing and evidence (the materials) on September 21, 2020. In accordance with sections 88 and 89 of the Act, I find that the respondents were duly served with the tenants' application materials.

The tenants confirmed receipt of the landlord's evidence on December 01, 2020. The tenants stated they did not have enough time to review this evidence. The landlord affirmed she did not serve her evidence earlier because she was sick and because she could not find the documents. The landlord's evidence was served six days before the hearing. Per Rule of Procedure 3.15, I do not accept the landlord's evidence.

The tenants confirmed receipt of the purchaser's evidence on November 27, 2020. In accordance with sections 88 and 89 of the Act, I find that the tenants were duly served with the purchaser's evidence and accept it.

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 landlord served a two-month notice to end tenancy so that the parents of the purchaser could move in. The tenants are claiming the purchaser did not occupy the rental unit for at least six months after March 03, 2020 and therefore owes them compensation equivalent to 12 months of rent. The purchaser claims that his parents moved into the rental unit on May 04, 2020 and are still occupying it.

The tenants affirmed the tenancy started on March 01, 2005 and ended on March 03, 2020. Monthly rent in the amount of \$1,075.00 was due on the first day of the month. The purchaser took possession of the rental unit on March 04, 2020. The landlord and the purchaser did not dispute this testimony.

The tenants affirmed receiving a Two Month Notice to End Tenancy for Landlord's Use (the Notice) on December 26, 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 March 01, 2020.

The rental unit ownership title issued on May 16, 2020 was submitted into evidence. The purchaser stated the four new owners of the rental unit are respondent SC, his wife RC and his parents PA and SA.

The purchaser stated when he received possession of the three-bedroom, 1,200 square feet rental unit there was garbage and old furniture left by the tenants, some doors were broken, kitchen cabinets were missing and the floor was damaged. Because of the damage the purchaser's parents could not move to the rental unit right away. Most of the damage was caused by deliberate actions of the tenants. The purchaser submitted into evidence ten photographs taken on March 04, 2020.

The purchaser affirmed he paid \$452.05 on March 09 for a junk removal service. On May 04, 2020 the purchaser paid \$9,187.50 for repairs to the drywall, cabinets and floor. Receipts dated March 09 and May 04, 2020 for both expenses were submitted into evidence. The purchaser completed the repairs on May 04, 2020. The purchaser's parents moved to the rental unit on May 04, 2020 and have been living there since then. The repairs could not be completed earlier because of the pandemic.

The purchaser said his parents struggled to live alone and rented two of the three bedrooms to another family (two adults and two children). A tenancy agreement indicating purchaser SC as the landlord dated May 15, 2020 was submitted into evidence. It states:

Master bedroom keep my parents [PA and SA]. Both living there. This house is shared.
Shares lived room, kitchen, bathroom, laundry.
[electricity] pay by tenants and [gas] Bill pay landlord

Witness SG testified she has been living next door to the rental unit since November 2004. The rental unit was renovated by the purchaser as the tenants left it in very poor condition. The parents of purchaser SC moved in some weeks after the renovations were completed and shortly after new tenants moved in.

The tenants affirmed it is very unlikely the purchaser's parents are sharing the rental unit with another family, as the rental unit is very small and because of health concerns due to the pandemic. The tenants stated they watched the house for months and only observed the new tenants living in the rental unit. The tenants submitted photographs taken in April 2020 showing the rental unit empty. Photographs taken in May and June 2020 show the new tenants living in the rental unit.

Analysis

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.

Based on the undisputed testimony and the Notice, I find the Notice was served with the intent of the purchaser or his parents occupying the rental unit. Based on the rental unit ownership title and the purchaser's testimony, I find the purchaser's parents are also owners of the rental unit.

The parties offered conflicting testimony regarding the occupancy of the property by the purchaser's parents 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 tenancy agreement dated May 15, 2020, unit ownership title, witness SG and the purchaser's coherent testimonies prove, on a balance of probabilities, the rental unit has been occupied by the purchaser's parents since May 04, 2020 and they are renting two of the three bedrooms to another family and sharing the commons spaces.

Residential Tenancy Branch Policy Guideline 50 states: "A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months." The Act does not prohibit the purchaser to rent bedrooms to other tenants, as long as the purchaser is occupying the rental unit.

Residential Tenancy Branch Policy Guideline 50 states:

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.

If a landlord ends a tenancy to renovate or repair a rental unit, then they should start taking steps to renovate or repair the unit immediately after the tenancy ends.

However, there may be circumstances that prevent a landlord from doing so. For example, there may be a shortage of materials or labour resulting in construction delays

Based on the photographs submitted by the tenants and the purchaser, the renovation receipts dated March 09 and May 04, 2020, witness SG and the purchaser's convincing testimonies, I find the rental unit was vacant from March 04 to May 04, 2020. The renovations the purchaser affirmed he completed are minor and are not the reason why the Notice was issued. I find the amount of time the rental unit was vacant (60 days) is reasonable.

Thus, the tenants' application is dismissed without leave to reapply.

As the tenants were unsuccessful in their application, 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: December 09, 2020