



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- Compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice);
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The tenant AC, the landlords and the landlords' legal counsel (counsel) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The landlord's legal counsel's office was originally listed as a respondent by the tenants. Counsel requested that his name be removed from this matter, as he is not one of the landlords. Counsel said that he represented the landlords in a legal capacity only and is not responsible for obligations of this tenancy.

I find counsel's request is supported by the evidence and I find it reasonable and appropriate to amend the tenants' application to exclude counsel as a respondent on the style of cause page and any monetary order, if awarded.

As another procedural matter, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the arbitrator determines that it is appropriate to do so, the arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

In this case, the tenants' application was made on November 13, 2020. One part of the tenants' application dealt with a monetary claim for compensation allowed for having received the landlords' Notice. The evidence for this part of the claim was filed with the tenants' application the next month, on December 13, 2020.

The tenants' other separate and distinct claim was for an alleged loss of quiet enjoyment. For this claim, the tenants submitted a significant amount of evidence at various times during the month of February 2021. This evidence was not clearly labeled, as each entry into the Residential Tenancy Branch (RTB) evidence portal had a similar title.

In reviewing the tenants' evidence on this issue, the claims originated in 2016.

Rule 2.5 stipulates that to the extent possible, at the same time as the application is submitted to the RTB, the applicant must submit to the RTB: a detailed calculation of any monetary claim being made; a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and copies of all other documentary and digital evidence to be relied on at the hearing.

Rule 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the RTB as soon as possible. In all events, the respondent's

evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

Rule 3.11 stipulates that if an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

Rule 3.17 provides that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

I find it administratively unfair to the respondents that the tenants waited so long after filing their application to file their evidence for this long-stranding claim so close to the hearing. This evidence was available to the tenants at the time of their application, and was therefore required to be filed in a single package.

I am exercising my discretion to dismiss that portion of the tenants' claim for loss of quiet enjoyment, with leave to reapply.

I informed the parties of this decision at the hearing.

This portion of the tenants' claim is **dismissed** with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Are the tenants entitled to compensation from the listed landlords and to recover their filing fee?

Background and Evidence

While I have turned my mind to all the documentary and oral evidence, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The tenants' accepted monetary claim against the respondents is \$15,480, which is the equivalent of 12 months' rent. The tenants have also requested the filing fee of \$100.

As the basis for this claim, the tenant submitted that she is entitled to this amount as they received two separate Two Month Notices to End Tenancy for Landlord's Use of

Property and that the rental unit was not used for the stated purpose listed on the Notice.

I have determined that the undisputed facts in this case are as follows:

This tenancy began on June 1, 2014, and ended on January 31, 2020.

The ending monthly rent was \$1,290.

One of the Notices received by the tenants was dated November 4, 2019, for an effective move-out date of January 6, 2020.

The second Notice received by the tenants was dated November 8, 2010, for an effective move-out date of January 31, 2020.

As a reason for ending the tenancy, both Notices listed all the conditions 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 a close family member intends in good faith to occupy the rental unit.

The tenants chose to accept the tenancy was ending and vacated the rental unit by January 31, 2020.

Tenant's submissions –

The tenant submitted that she was informed by counsel, in an email, that the rental unit had sold and the purchaser requested that the landlords issue a Two Month Notice to End Tenancy for Landlord's Use of Property. This turned out not to be the case.

The tenant asserted that on the day the Notice was issued and the day the tenancy ended, the rental unit had not been sold. Instead, the rental unit was listed for sale with a realtor on March 10, 2020, was delisted on April 22, 2020, then listed for sale again on April 27, 2020, and sold on April 30, 2020.

Filed into evidence was a print-out from a title search and a copy of the real estate listing.

The tenant submitted that the landlord was still listed as registered owner of the rental unit until after the time of sale. The title search showed a different owner as of May 29, 2020. Filed into evidence was a copy of the title search.

Landlord's submissions –

The landlord submitted that they were originally conducting a private sale of the rental unit with a potential purchaser. The landlord submitted that the tenants made it difficult to conduct an appraisal, making several attempts to do so, without success.

The landlord submitted the purchaser made the decision to continue on with the purchase subject to an appraisal and condition inspection of the unit once it was vacant.

The landlord said that the purchaser backed out of the sale on January 31, 2020, when he saw the condition of the rental unit left by the tenants. The landlord submitted that the rental unit was not suitable for occupation, which caused the failure of the sale. Filed into evidence were photographs of the rental unit.

In response to my inquiry, the landlord said that one of the conditions of the sale was the condition of the rental unit.

Filed into evidence by the landlord was a statement from the potential purchaser that once he saw the photos of the rental unit during the first week in February 2020, he was no longer interested in purchasing the property.

The landlord confirmed that after the tenants vacated, the rental unit was listed for sale on March 10, 2020.

Filed into evidence by the landlord was a letter from a Notary Public, advising the landlord that the transfer of the land was filed in the land title office on May 27, 2020.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In this instance, the tenants were required to prove their claim, on a balance of probabilities.

In the case before me, the undisputed evidence is that the landlord issued the tenants 2 Two Month Notices to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, for a final, effective move-out date of January 31, 2020. The tenants complied with the Notice and vacated by January 31, 2020.

The landlord marked the Notice indicating **that all the conditions 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 a close family member intends in good faith to occupy the rental unit.

Section 51(2) provides that if 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 if 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 tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

In this case, there was no evidence that the potential purchaser had asked the landlord, in writing, to give the tenants the Notice. Further, the landlord's own evidence confirmed that an appraisal and the condition of the rental unit were two of the conditions of sale, which would not be lifted until the tenants vacated. I find this evidence shows that the conditions of sale were not lifted at the time the Notices were issued to the tenants.

For these reasons, I find the landlord had no ground under section 49 of the Act to issue the Notice.

The landlord ought to have waited for the written request from the purchaser to her, as the seller, prior to issuing the Notice, as she was required to do so under section 49 (5) (c), or to wait until all the conditions on which the sale depends have been satisfied.

For the above reasons, I therefore find the tenants are entitled to monetary compensation equivalent to 12 months' rent.

I further find I do not have to consider extenuating circumstances in this matter, to excuse the landlord from paying this amount, as I have found the landlord had no ground to issue the Notice in the first place.

As a result, I grant the tenants a monetary award of \$15,580 as requested, which is the equivalent of monthly rent of \$1,290 for 12 months, or \$15,480, and \$100 for the cost of filing this application.

I grant and issue the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$15,580.

Should the landlord fail to pay the tenants this amount without delay, the tenants may serve the order on the landlord for enforcement purposes. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent of \$15,480 and recovery of the filing fee of \$100 is granted and they have been granted a monetary order for the amount of \$15,580.

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: March 11, 2021

Residential Tenancy Branch