Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenants under the Residential Tenancy Act (the Act) on August 5, 2020, seeking:

- Compensation for monetary loss or other money owed pursuant to section 51(2) of the Act; and
- Recovery of the filing fee.

The hearing was originally convened by telephone conference call on November 26, 2020, and was attended by the Tenants, both of whom provided affirmed testimony. No one appeared on behalf of Purchaser/Respondent. The hearing was subsequently adjourned due to issues relating to the service of the Notice of Dispute Resolution Proceeding, including the Application and the Notice Hearing. An interim decision was made on November 30, 2020, and the reconvened hearing was set for February 22, 2021. A copy of the interim decision and the Notice of Hearing was sent to Tenants by the Residential Tenancy Branch (the Branch) on December 2, 2020, in the manner requested by them at the hearing. For the sake of brevity, I will not repeat here the matters covered in the interim decision, and as a result, it should be read in conjunction with this decision. Due to an unscheduled absence on my part, the February 22, 2021, hearing was rescheduled by the Branch to March 9, 2021, at 11:00 AM and a new Notice of Hearing was sent by the Branch, by email, to both parties.

The hearing was reconvened by telephone conference call on March 9, 2021, at 11:00 AM and was attended by the Tenants, the Purchaser's agent and spouse (the Agent) and the Purchaser's Legal Advocate (the Advocate). All testimony provided was affirmed. As the Agent acknowledged receipt of the Notice of Dispute Resolution Proceeding, including a copy of the Application and the original Notice of Hearing, the interim decision, and the Notice of Hearing for this hearing date and time, and neither

the Agent nor the Advocate raised concerns regarding service timelines or the method of service, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed at the hearing and listed in the Dispute Management System.

Preliminary Matters

Preliminary Matter #1

The Agent acknowledged receipt of the Tenant's documentary evidence and raised no concerns regarding the service method or service timelines. As a result, I have accepted this documentary evidence for consideration.

Although the Tenants acknowledged receipt of the first package of the Landlord's documentary evidence, and raised no concerns with regards to the service method or service timelines for this package, they stated that a second evidence package was received by them on February 16, 2021, which was less than 7 days before the reconvened hearing originally schedule for February 22, 2021.

Despite the above, the Tenants agreed that they have now had time to consider this documentary evidence, as the February 16, 2021, hearing was rescheduled to March 9, 2021. Although I agree that the second evidence package was not served on the Tenants in compliance with rule 3.15 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), the Tenants acknowledged that they have now had sufficient time to review and consider this evidence. As a result, I am satisfied that the acceptance of this late evidence will not unreasonably prejudice one party or result in a breach of the principles of natural justice, and as a result, I have accepted it for consideration pursuant to rule 3.17 of the Rules of Procedure.

Preliminary Matter #2

Although 13 jpeg files were submitted to the Branch and served on the Tenants on the Landlord's behalf, only one was viewable by the Tenants and I, a photograph of a fireplace, a window, and some Christmas lights. Rule 3.10 of the Rules of Procedure states that digital evidence may include photographs, audio recordings, video recordings or electronic versions of printable documents in an accepted format. Rule 3.10.5 of the Rules of Procedure states that Before the hearing, a party providing digital evidence must confirm that the Branch and the other party has playback equipment or is otherwise able to gain access to the evidence. It also states that if a party or the Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

Based on the above, I excluded the 12 unviewable jpegs from consideration.

Preliminary Matter #3

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Preliminary Matter #5

During concluding statements near the end of the hearing the Tenant A.H. disconnected from the teleconference suddenly, and without notice. Although the other Tenant, M.B. stated that they would let A.H. know that they could call back in, and the hearing remained unlocked so that they could do so, A.H. never reconnected to the teleconference. The hearing continued for a few more minutes with the parties still present, and was then concluded.

Issue(s) to be Decided

Are the Tenants entitled to compensation for monetary loss or other money owed pursuant to section 51(2) of the Act?

Are the Tenants entitled to recovery of the filing fee for the Application pursuant to section 72(1) of the Act?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed and dated September 25, 2018, between the Tenants and the Landlords K.S. and P.S., states that the month to month (periodic) tenancy commenced on October 3, 2018, at a monthly rent amount of $2,000.00, and that rent is due on the 3rd day of each month. It also states that a $1,000.00 security deposit and a $1,000.00 pet damage deposit were required. At the hearing the parties confirmed that these are the correct terms of the tenancy agreement, and that the $2,000.00 in deposits were paid by the Tenants to the Landlords.

The parties agreed that the Purchaser, A.K., purchased the property shortly after the start of the tenancy, and requested that the Landlords serve the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice), which the Tenants acknowledge receiving by email on October 24, 2020, from their Landlords.

The Two Month Notice in the documentary evidence before me is signed and dated October 23, 2020, has an effective date of January 2, 2019, and states that the reason for ending the tenancy is because all of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the Landlords, in writing, to give the Two Month Notice as they or their close family member intend in good faith to occupy the rental unit.

The Tenants stated that at the time the Two Month Notice was served, they had no reason to doubt that the Purchaser or their close family member were going to occupy the rental unit, and as a result, they did not dispute it. The Tenants stated that they exercised their rights under section 50 of the Act to end the tenancy earlier than the effective date stated on the Two Month Notice, and ended the tenancy on November 9, 2020, having already moved out of the rental unit a few days earlier, on November 5, 2020. Neither the Agent nor the Advocate disputed this testimony.

The parties disputed whether or not the Purchaser or their close family member(s), as defined by section 49(1) of the Act, took steps to occupy the rental unit, which was the stated purpose for ending the tenancy in the Two Month Notice, within a reasonable period after the effective date of the notice, and/or occupied the rental unit for at least 6 months, beginning within a reasonable period after the effective date of the notice.

The Tenants stated that they when they vacated the rental unit, they moved just around the corner and were therefore able to keep an eye on the property, which remained vacant for many months. The Tenants stated that whenever they saw the rental unit, which was frequently, the blinds were closed, there was no patio furniture, and there were no lights on. The Tenants stated that they also contacted local utility service providers and confirmed that no cable or internet services were connected and activated after they vacated. The Tenants submitted copies of chat conversations with two major cable and internet service providers in April of 2019 and February of 2020, after the effective date of the Two Month Notice, wherein the service providers confirmed that no new services were active at the rental unit address.

The Tenants argued that although the Purchaser has submitted hydro bills for the rental unit for my review, allegedly showing hydro usage by the Purchaser or their close family member after the Tenants moved out, the amounts of the bills are too low to demonstrate occupancy. The Tenants stated that when they resided in the rental unit, their hydro usage was on average $37.11 per month. Further to this, they stated that no electricity usage is noted at all for some of the billing periods shown in the electricity bills submitted on behalf of the Purchaser, and that the amounts shown on these bills include taxes and other fees charged monthly regardless of use, rendering the total amount charged for actual electricity usage during the billing periods, significantly lower than the total shown on the bills. As a result, they argued that the amounts shown on the electricity bills cannot possibly demonstrate that someone was actually occupying the rental unit for residential purposes. The Tenants also argued that municipal utility bills submitted on behalf of the Purchaser show only ownership of the rental unit by the Purchaser, not occupancy.

As a result, the Tenants argued that rental unit was not occupied, by the Purchaser or their close family member, within a reasonable period of time after the effective date of the Two Month Notice.

The Tenants stated that they also now suspect that the Purchaser never intended to occupy the rental unit or to have it occupied by a close family member, after having the Two Month Notice served by the Landlords, as they contacted the Purchasers realtor in May of 2019, who expressed surprise to them that the Purchaser had gone through with the sale, as the Purchaser had been specifically looking for a Tenanted property. The Tenants stated that they subsequently contacted the Strata Manager for the building in which the rental unit is located and learned that the building has rental restrictions, restricting the number of units that can be rented out at any one time, and that the

Strata bylaws prohibit the transfer of any permission to rent out units when they are sold.

The Tenants stated that they also learned from documentary evidence submitted on behalf of the Purchaser, that upon taking possession of the rental unit, the Purchaser sought permission from the Strata Counsel to rent out the unit, by placing it onto the building waitlist for rentals, and then checking up on their waitlist status shortly thereafter, on May 19, 2019. In support of this testimony the Tenants pointed to an email authored by the building Strata Manager on May 24, 2019, wherein the Strata Manager states that there is a rental restriction at the property and that rental permission does not transfer with the sale of a property. The Tenants also pointed to an email from the Purchaser to the Strata Manager on May 19, 2019, requesting an update on their position on the rental waitlist, which they stated had previously been added to.

In addition to the above, the Tenants provided a detailed history of how the tenancy came into place, including involvement by the Purchaser in the selection of them as tenants for the property, as the property was already for sale at the time the tenancy agreement was entered into. The Tenants stated that a month to month tenancy was only entered into with the Landlords as the Landlord had advised them by text message that the Purchaser had agreed to sign a fixed-term tenancy agreement with them once they took possession of the property. Copies of this text message conversation was submitted for my review, along with correspondence sent to the Tenants by the Landlords at the time the Two Month Notice was served, and shortly thereafter, expressing regret for the situation and the Purchaser's apparent change in intentions with regards to occupying the rental unit, as a result of the Strata bylaw prohibition on the transfer of permission to rent out the unit with the sale of the property. The Tenants argued that this documentary evidence, coupled with the evidence that the rental unit was not occupied withing a reasonable period of time after the effective date of the Two Month Notice, demonstrates that the Purchaser never had any intention of occupying the rental unit, and was simply waiting for permission from the Strata to rent it out again.

The Agent agreed that Strata bylaws prevented the continuation of the tenancy with the sale of the property and the subsequent rental of the property by the purchaser after possession without Strata approval, as there are rental restrictions in the building, but denied the Tenants' allegations that neither the Purchaser nor a close family member of the Purchaser moved in as required. The Agent stated that the Purchaser did not wish to leave the rental unit vacant, although they were free to do so under the Strata bylaws, so they moved into the rental unit on January 15, 2019. The Agent stated that no movers were required as the Purchaser moved in only a small bed and couch, and was

assisted by their brother. The Agent stated that the Purchaser did not start services, such as cable and internet at that point, as the Purchaser stayed at the property only on weekdays to sleep, and had internet access on their phone and at their workplace very close by. The Agent stated that between mid-October of 2019 – February 2020, the Purchaser's brother resided in the rental unit, which is why utilities went up during that period, and why cable and internet services were temporarily established. Copies of electricity and cable/internet bills relied upon by the Agent were submitted for my review. The Agent also pointed to a photograph of a fireplace, a window, and some Christmas lights, date stamped December 8, 2019, stating that this establishes that the Purchaser was residing in the rental unit at that time.

The Advocate submitted two annual municipal utility bills for my review, and argued that they show that the Purchaser occupied the property as required. They also argued that the image of the fireplace establishes that there was a gas fireplace in the rental unit, and argued that the electricity bills were low because the Purchaser heated the rental unit with the fireplace using gas covered by the Strata fees. The Advocate took the same position as the Agent with regards to the lack of cable and internet services, stating that there was Wi-Fi in the lobby of the building, and internet available at the Purchasers work nearby and the library across the street. The Advocate disagreed that the electricity bills show zero usage, stating instead that they show feasibly low yet consistent usage from the date when the Purchaser moved in, until the Purchaser's brother also moved in, at which point the usage increased. Although the Advocate stated that the Purchaser used the rental unit as their address of residence when filing their taxes, no proof of this was submitted. The Advocate also stated that they attempted to obtain water usage information for the rental unit after the Purchaser moved in, but could not get it.

Based on the above the Agent and Advocate argued that the Purchaser occupied the rental unit as of January 15, 2019, which was within a reasonable period after the effective date of the Two Month Notice, January 2, 2019, and that the Purchaser resided there for at least 6 months thereafter. As a result, the Agent and Advocate argued that the Tenants should not be entitled to any compensation under section 51(2) of the Act.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me for consideration from the parties, I am satisfied that a tenancy to which the Act applies existed, and that this tenancy ended on or about November 9, 2018, as a result of the

issuance of a Two Month Notice by the Landlords pursuant to section 49(5) of the Act, on the basis that the Purchaser and/or their close family member, intended in good faith to occupy the rental unit, and the Tenants' subsequent exercise of their right to end the tenancy early under section 50(1) of the Act. I am also satisfied that rent at the time the tenancy ended was $2,000.00 per month and that the effective date for the Two Month Notice was January 2, 2019.

Section 49(1) of the Act states that a landlord may end a tenancy in respect of a rental unit if the landlord enters into an agreement in good faith to sell the rental unit, all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because 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.

Section 51(2) of the Act states that Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement 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 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.

As the parties agreed that a Two Month Notice was served on the Tenants by the Landlords, at the Purchaser's request, because the Purchased advised the Landlords that they or their close family member intended in good faith to occupy the rental unit, I therefore find that the Purchaser, or one of their close family member(s), or both, were required, within a reasonable period of time after January 2, 2019, the effective date of the Two Month Notice, to take steps to occupy the rental unit, and were required to occupy it for at least 6 months thereafter, unless extenuating circumstances prevented them from doing so, as set out in section 51(3) of the Act. As neither the Agent nor the Advocate argued that extenuating circumstances apply, I find that they do not.

In their Application the Tenants sought $24,000.00 in compensation for the Purchaser, the equivalent of 12 months rent, pursuant to section 51(2) of the Act. Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that in order to be successful in their claims, it is incumbent upon the Tenants, who are the Applicants in this matter, to satisfy me that it is more

likely than not, that neither the Purchaser nor their close family member took reasonable steps to occupy the rental unit within a reasonable period of time after the effective date of the Two Month Notice, or the Purchaser or their close family member failed to occupy the rental unit for at least 6 months, starting within a reasonable period of time after the effective date of the Two Month Notice.

The Tenants testified that when they vacated the rental unit, they moved just around the block, and as a result, they were able to keep a close eye on the rental unit. They testified that they never saw any patio furniture or lights on in the rental unit after they vacated, and that when they contacted two local cable and internet service providers several months after they vacated, in April of 2019, and again in February of 2020, the service providers confirmed in writing that no such services were active at the rental unit address. Copies of this written confirmation was submitted by the Tenants for my consideration.

Although the Purchaser submitted utility bills to counter the Tenants' arguments that the rental unit was unoccupied for more than a reasonable period of time after the effective date of the Two Month Notice, for the following reasons I agree with the Tenants that the bills submitted do not support that the rental unit was occupied within a reasonable period after the effective date of the Two Month Notice, as argued by the Advocate. First, the municipal utility bills appear to be standard rate bills issued to the owner of the property for fees incurred for things like garbage and sewer, regardless of usage, as they contain no information regarding measured consumption during the stated billing periods, and appear to be billed in advance on a yearly abasis. As a result, I dismiss the argument by the Agent and Advocate that they in any way establish that the property was occupied by the Purchaser or a close family member of the Purchaser, or anyone else for that matter.

Second, although the Agent and Advocate argued that the low electricity usage amounts shown on the bills are reasonable to establish occupancy, even though the Tenants may have used more electricity per month during their tenancy, as the Purchaser stayed there only during the week to sleep, and spent much time outside of the house and at work, I disagree. Much of the monthly billable total for the electricity bills submitted on behalf of the Purchaser appear to be for things charged each billing period, regardless of usage, such as basic charges for the number of days in the billing cycle, crisis fund contributions, and a regional transit levy, and taxes. The electricity bills submitted on behalf of the Purchaser show that on average, less than 1 kWh per day of electricity was being used at the rental unit, during the billing periods for which the bills were submitted. Contrary to the Advocates affirmed testimony during the hearing that

there were no periods of zero electricity usage after the Purchaser moved into the rental unit on January 15, 2019, the electrical bill before me for the rental unit for the period of January 5, 2019 – February 16, 2019, a period of 43 days, 33 days of which were after the date of occupancy given by the Agent and Advocate, shows that there were 0 kWh of electricity used at the rental unit, which I find is not at all consistent with any level of use or occupancy by the Purchaser, or anyone else. Between February 17, 2019 – March 3, 2019, a period of 43 days, only 32 kWh of electricity was used, and between April 1, 2019 – April 4, 2019, a period of 4 days, only 3 kWh were used, which is an average of only 0.74 kWh per day. Similar trends continued thereafter, with only 68 kWh being used between August 7, 2019 – October 4, 2019, a period of 59 days, an average of 1.15 kWh per day during that billing cycle, and only 36 kWh being used between February 5, 2020 – April 2, 2020, a period of 58 days, an average of 0.62 kWh per day.

Based on common sense and ordinary human experience, I find that this is far below what could reasonably be expected for even a small occupied residence, even one with energy efficient appliances and things such as heating either included in Strata fees, as argued by the Advocate, or billed through another type of service provider. The energy usage shown in the bills submitted on behalf of the Purchaser are more suggestive to me of a residence where a single light bulb or a low-wattage appliance were regularly left on for periods of time, and is not at all indicative of a residence where other types of large appliances, such as a stove or oven, dishwasher, washer and dryer, or any regular household lights or small appliances, such as charging devices, a television, a microwave, or a coffee maker, were regularly used, which would be expected if the residence was in fact occupied for residential purposes, as discussed in Residential Tenancy Policy Guideline (the Policy Guideline) #2A, within a reasonable period of time after the effective date of the Two Month Notice, and for at least 6 months thereafter, as argued by the Agent and Advocate. It also makes no sense to me that there would be zero electrical usage in the rental unit as shown in the first electrical bill submitted, between January 15, 2019 – February 16, 2019, a period in which both the Agent and the Advocate stated that the Purchaser was occupying the rental unit for residential purposes.

While I accept that it is possible that the Purchaser declined to have cable and internet services established at the rental unit as they had a cell phone and worked nearby, as argued by the Agent and Advocate, given my finding above, I find this highly unlikely. I also note that the cell phone bill submitted on behalf of the Landlord lacks a billing address, and I therefore find that it only establishes that the Purchaser has a cell phone, which is not in dispute, and not that the Purchaser was occupying the rental unit. Further to this, although the Advocate stated that the Purchaser used the rental unit

address as their residential address when filing their taxes, no proof of this was before me, and as a result, I find that I cannot be satisfied that this was the case.

In contrast, I find the Tenants' argument that cable and internet services were not hooked up by the Purchaser after they vacated the rental unit because the rental unit remained unoccupied, to be significantly more compelling and plausible under the circumstances and in consideration of all of the facts and evidence before me. Based on the above, I dismiss the arguments from the Agent and the Advocate that the utility bills submitted establish occupancy of the rental unit by the Purchaser or their close family member within a reasonable period of time after the effective date of the Two Month Notice, and for 6 months thereafter, as well as their arguments that the lack of cable and internet services is not indicative of a lack of occupancy by the Purchaser.

Although the Agent pointed to a photograph allegedly taken in the rental unit in December of 2019, stating that this established occupancy; as December of 2019 is almost one year after the effective date of the Two Month Notice, I find that the photograph does not establish occupancy of the rental unit either within a reasonable period of time after the effective date, or within 6 months thereafter. As a result, I find it of no value in establishing whether the rental unit was occupied by the Purchaser or the Purchaser's close family member, within the relevant time period.

Further to this, I find the arguments made by the Tenants at the hearing that at the time the Two Month Notice was served, the Landlord never intended to occupy the rental unit or have it occupied by their close family member, compelling. The Tenants submitted an email from the Strata Manager stating that rentals are restricted in the building and that rental permission does not transfer with the sale of a property. Further to this, the Tenants pointed to documentary evidence submitted on behalf of the Landlord, in the form of email communications between the Purchaser and the Strata demonstrating that the Purchaser placed the rental unit on the waitlist for re-rental shortly after they took possession, and were already inquiring about their position on the waitlist by May 10, 2019, only 4 months after the effective date of the Two Month Notice. Finally, the Tenants testified that they called the Purchasers realtor, who expressed surprise to them that the Purchaser had gone through with the sale of the property as they were looking for a renter occupied property, which neither the Advocate nor the Agent denied.

Based on the above, I find that the Tenants have satisfied me, on a balance of probabilities, that the rental unit was not occupied by the Purchaser, their close family member, within a reasonable period of time after the effective date of the Two Month Notice, or for at least 6 months thereafter. As a result, I find that the Tenants are entitled

to the $24,000.00 sought in the Application, which amounts to 12 times the monthly rent payable under the tenancy agreement at the time the tenancy ended, pursuant to section 51(2) of the Act. As the Tenants were successful in their Application, I also grant them recovery of the $100.00 filing fee, pursuant to section 72(1) of the Act.

Pursuant to section 65(1)(d) and 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of $24,100.00 and I order the Purchaser to pay this amount to the Tenants.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of $24,100.00. The Tenants are provided with this Order in the above terms and 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.

Although this decision has been rendered more than 30 days after the close of the proceedings, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render this decision and make the above noted order, are affected by the fact that this decision and was rendered, and the associated order issued, more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: April 15, 2021

Residential Tenancy Branch