Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FFT

Introduction

The tenants, who are the applicants in this dispute, seek $22,083.36 in compensation from the respondent landlord or the respondent purchaser, pursuant to section 51(2) of the *Residential Tenancy Act* (the "Act"). In addition, the tenants seek to recover the cost of the application filing fee under section 72 of the Act.

The tenants, the landlord, the purchaser, legal counsel for the purchaser, and a real estate agent for the purchaser, attended the hearing on May 3, 2021.

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding and Evidence

The tenants testified that they served the Notice of Dispute Resolution Proceeding package (the "package") on both the landlord and the purchaser by Canada Post registered mail. A copy of the registered mail tracking numbers for each package was provided, and the Canada Post registered mail tracking website indicated that the landlord received the package on January 4, 2021 and the purchaser received the package on January 5, 2021. A signature download was available for the purchaser, and the signed name matches that of the purchaser.

Given the above, I find that the tenants served the respondents with the package in compliance with the Act, the *Rules of Procedure,* and therefore both respondents were fully aware of the tenants' claim almost four months before the hearing.

Purchaser's counsel remarked that neither he, nor his client, were in receipt of any additional evidence that the tenants purportedly served them. The tenants testified that they had served additional evidence. Nonetheless, counsel explained that they were comfortable proceeding with the hearing, as any evidence needing to be provided by the purchaser would be viva voce.

I note that the relevant evidence submitted by the tenants consists of documentation that the purchaser would have either likely possessed or been made aware of.

It should be noted that, at the outset of the hearing, the purchaser's counsel submitted that his client should not be a party to this proceeding, because the purchaser never took possession of the rental unit. I address that argument later in the decision.

Issue

Are the tenants entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began December 1, 2013 and ended February 29, 2020. Monthly rent was $1,840.28. The tenants paid security and pet damage deposits. A copy of a written residential tenancy agreement was submitted into evidence.

On January 4, 2020, the landlord and the purchaser signed a *Contract of Purchase and Sale* (the "Contract") for the sale of the rental unit, which is a three-bedroom house. A barely legible copy of the Contract was in evidence, but it is clear enough to show a $850,000 purchase price and a $50,000 deposit. The Contract was electronically signed and initialled by the parties. The sale completion date was set for April 1, 2020.

Also provided into evidence by the landlord was a copy of a one-page document titled *Tenant Occupied Property - Buyers Notice to Seller for Vacant Possession* (the "Notice to Seller"). The Notice to Seller conveyed the purchaser's written request to the seller (the landlord) that the tenants currently residing in the property be given a notice to vacate the property by 1:00 p.m. on March 31, 2020, pursuant to section 49 of the Act. This Notice to Seller was signed by the purchaser and witnessed by the purchaser's real estate agent (from what I can discern, based on the name) on January 22, 2020.

Two days later, following the purchaser's instructions, the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). The Notice, a copy of which is in evidence, stated that the tenancy would end effective March 31, 2020.

Page two of the Notice stated that the reason for the tenancy ending was that "All of 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." Also included on page two was the purchaser's name and address. The Notice was signed by the landlord on January 24, 2020 and was properly served. Neither party took any issue with the form or content of the Notice.

The tenants testified that, after receiving the Notice, they decided to move out early. February 29, 2020 to be exact. They felt that if the eviction was indeed "legit" they would have likely had no chance to dispute and cancel the Notice. "We had no choice," the male tenant remarked.

(Further to the tenant's reference to the eviction being "legit," the lengthy, fractious relationship between the parties has landed them in a total of eight dispute resolution hearings spanning from 2015 to 2019. Seven of those disputes dealt with various notices to end tenancy. Thus, the tenants had some doubts that yet another notice to end the tenancy was genuine. The tenants testified that the sale of the property was initiated shortly after the landlord was fined an administrative penalty in late November 2019 under section 87.4 of the Act. See *Notice of Administrative Penalty and Reasons for Decision*.)

Nevertheless, the tenants vacated, and the landlord never mentioned anything to them about the issues she was having with the purchaser and the sale of the property.

After the tenants had left, one or both briefly returned to the property a few times to take pictures. Apparently, there were people living in the rental unit, but the tenant did not elaborate much on this point. The tenants were at the property gathering evidence to defend a claim made against them by the landlord for property damage. That claim, which included a cross-application by the tenants for the return of their security and pet damage deposits, was heard before an arbitrator on July 20, 2020.

It was during that hearing when the tenants discovered, much to their surprise, that the sale of the property had fallen through: "The landlord testified that the sale of the property did not go through as the purchaser breached the sales agreement after all the condition [*sic*] of sale were removed." (See Residential Tenancy Branch decision 072020 Decision 6503 at page 3, para 5.) Based on the evidence before me, it appears that the purchaser reneged on the contract on April 1, 2020. This was not disputed.

The landlord briefly testified that she simply wanted to sell the house. The landlord only found out that the sale was not going through at the end of March. After the purchaser reneged on the contract “at the end of March,” the landlord tried a second time on June 2 to sell the property to the purchaser. This second attempt proved futile. The house remained vacant until new tenants moved into the rental unit in November 2020.

Counsel for the purchaser provided lengthy oral submissions in respect of his client’s position. The purchaser had initiated the sale, and he signed the Contract. However, problems apparently cropped up shortly thereafter. For reasons that were not fully explained, there needed to be an assignment to the purchaser’s wife. This was required by the mortgagee. However, the purchaser’s wife was in India and was unable to execute the required documents. In the meantime, the purchaser’s realtor was “trying to get [the purchaser] to qualify [for financing],” submitted counsel. There was an attempt to extend the closing date to April 10, but this did not happen.

On this point, it is worth noting that the landlord submitted into evidence a copy of a letter, dated April 1, 2020, from the landlord’s notary to the purchaser’s lawyer. The notary writes as follows, inter alia:

> I acknowledge receipt of your correspondence dated March 30, 2020 requesting an extension of the completion date beyond April 1, 2020.
>
> My client does not agree to such an extension request.
>
> I confirm I have yet to receive any documents by your office for execution by my client for today’s completion.
>
> My client is ready, willing and able to close the transaction today.

In summary, counsel submitted, the April 1st closing would not occur because there was not financing in place and the purchaser’s wife was in India. Further attempts to get the sale moving were made in May and June, to no avail. The purchaser was never able to obtain financing, explained counsel, even though the purchaser clearly intended to buy the property. After all, he put down $50,000 as a deposit. And, counsel added, the purchaser fully intended to occupy the property but was unable to complete the process.

Purchaser’s counsel argued that extenuating circumstances created a situation whereby the purchaser was simply unable to complete the sale.

It is worth noting that neither the purchaser, nor his real estate agent, nor any other witness for the purchaser, provided any testimony during the hearing.

In their brief rebuttal and closing submissions, the tenants questioned why no documentary evidence such as correspondence was submitted by the purchaser. They argued that there is “no supporting documentation to support [the purchaser’s] claim.” One of the tenants remarked, “it just doesn’t make any sense.” And, even with the pandemic (which was about to begin), there “should’ve been some correspondence” the tenants argued. “Where is proof of the bank issues?” the tenants added.

In her brief closing, the landlord merely remarked that she “did everything right.”

In his closing, purchaser’s counsel commented that he was sympathetic to the tenants’ situation. However, in respect of additional correspondence, he explained that much of any correspondence involving the purchaser’s ongoing financing and other issues would have been “without prejudice” documents and of minimal value.

Analysis

First, it is worth reviewing section 49(5) of the Act. This is the section under which the Notice was give by the landlord to the tenants. It reads as follows:

> A landlord may end a tenancy in respect of a rental unit if
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> (a) the landlord enters into an agreement in good faith to sell the rental unit,
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> (b) all the conditions on which the sale depends have been satisfied, and
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> (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
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> (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.

A notice to end tenancy given under this section must comply with sections 49(7) and 52 of the Act. The parties did not dispute that the Notice complied with the Act.

Turning now to section 51(2) of the Act, which is the relief that the tenants seek:

> (2) 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
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> (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.

I will first address the purchaser's counsel's position that his client should not be a party to this action. Counsel argued that because the sale never went through, his client never purchased the property, and thus, is not a purchaser for the purposes of the Act. The purchaser paid the $50,000 deposit, and he was all set to proceed with the sale, but things did not come to together for a variety of reasons, and the contract never came to fruition.

With respect, I disagree with counsel's argument. The person intending to purchase the property became a "purchaser," for the purposes of the Act, on January 4, 2020 when he signed the Contract. He was the purchaser when he signed the Notice to Seller on January 24, 2020. Indeed, he remained the purchaser up until he reneged on the contract on April 1, 2020, which occurred after the effective date of the Notice and long after the tenants had vacated. There is no indication and no evidence to support an argument that the purchaser was somehow not a purchaser between January 4 and April 1. It therefore follows that, given that it was the purchaser who asked the landlord to give the notice, it is the purchaser—and not the landlord—who bears the obligation of compensating the tenants if they fail to comply with either subsections 51(2)(a) or (b).

Thus, for the purposes of this application, the claim is solely against that of the purchaser. Indeed, I would agree with the landlord's testimony that "I did everything right," and that all that she wanted to do was to sell the house. In summary, I find that the purchaser is indeed a party to this application.

The effective date of the Notice was March 31, 2020. The house sat empty until October 2020 and there is no evidence to support a finding that the rental unit was used for the stated purpose for ending the tenancy for at least six month's duration, beginning within whatever reasonable period ought to elapsed after the effective date of the Notice.

Moreover, there is no evidence that steps were taken, within a reasonable period after the effective date of the Notice, to accomplish the stated purpose for ending the tenancy. In short, the purchaser instructed the landlord to serve the Notice to the tenants, the tenants vacated the property (with children in tow), and then the property sat vacant for another seven months.

Taking into careful consideration all of the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving that the purchaser breached section 51(2) of the Act..

However, I must turn now to the issue of whether the purchaser is excused from liability. Section 51(3) of the Act is the relevant section:

> The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from
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> (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
>
> (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Purchaser's counsel argued that there are, or were, extenuating circumstances in this matter: the purchaser was unable to complete the sale for reasons beyond their control and that were not anticipated.

What is absent, though, is any evidence of the supposed extenuating circumstances. Despite the purchaser having notice of this claim four months before the hearing, no documentary evidence was uploaded by either the purchaser or his lawyer.

Furthermore, neither the purchaser nor his real estate agent, nor anyone else on behalf of the purchaser for that matter, provided any testimony during the hearing. The entirety of the purchaser's case was presented by way of counsel's submissions. And this is the problem: submissions by counsel are not evidence. Submissions must be supported by evidence. They are simply submissions and nothing more. (See *Mwanri v. Mwanri*, 2015 ONCA 843 at para 32; and *R. v. Golzari*, 2017 CMAC 3 at para 38.)

Certainly, while there is the letter dated April 1, 2020 from the landlord's notary to the purchaser's lawyer (a letter which was submitted into evidence by the respondent landlord, and not the purchaser), this letter is not evidence of whatever it was that was actually going on in the background, with the purchaser. Rather, it simply reflects a request and denial of an extension of a closing date.

In the absence of any evidence, the purchaser's claim that there existed extenuating circumstances which would absolve him of liability under section 51(3) of the Act must fail. For this reason, I must conclude that there were no extenuating circumstances that prevented the purchaser from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or, from using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In summary, after considering all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for $22,083.36 in compensation against the purchaser, pursuant to section 51(2) of the Act.

Finally, section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenants succeeded in their application, I grant them $100.00 in compensation to cover the filing fee cost.

The tenants are awarded a total of $22,183.36

A monetary order reflecting this award is issued in conjunction with this Decision, to the tenants. The tenants must serve a copy of the monetary order on the purchaser. (While the style of cause within the order includes the landlord's name, the order for payment is made solely against the purchaser.)

Conclusion

The tenants' application is granted.

I grant the tenants a monetary order in the amount of $22,183.36, which must be served on the purchaser. If the purchaser fails to pay the tenants the amount owed, the tenants may, within 15 days of the purchaser being served the order, file and enforce the order in the Provincial Court of British Columbia.

This decision is final and binding, except where otherwise permitted under the Act or the *Judicial Review Procedure Act,* RSBC 1996, c. 241, and is made on delegated authority under section 9.1(1) of the Act.

Dated: May 7, 2021

Residential Tenancy Branch