



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord purchaser ("landlord") did not attend this hearing, which lasted approximately 15 minutes. The tenant and his advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that his advocate, who is his wife, had permission to speak on his behalf. The tenant's advocate did not testify at this hearing.

The hearing began 1:30 p.m. and ended at 1:45 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, the tenant's advocate and I were the only people who called into this teleconference.

I informed the tenant that he was not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. At the end of the hearing, the tenant affirmed under oath that he did not record this hearing.

During the hearing, I explained the hearing process to the tenant. The tenant had an opportunity to ask questions. The tenant stated that he was ready to proceed with the hearing, and he did not make any adjournment or accommodation requests.

The tenant stated that the landlord was served with the tenant's application for dispute resolution hearing package on January 21, 2021, by way of registered mail to the address provided by the landlord in the buyer's notice to seller for vacant possession, dated August 26, 2020. The tenant provided a copy of this notice. The tenant provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on January 26, 2021, five days after its registered mailing.

The tenant stated that he served a hydro letter as evidence to the landlord on January 29, 2021, by way of regular mail. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's hydro letter on February 3, 2021, five days after its mailing.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on August 1, 2017 and ended on November 1, 2020, with the former landlord seller ("former landlord"). A written tenancy agreement was signed by the tenant and the former landlord. Monthly rent of \$1,872.00 was payable on the first day of each month. A security deposit of \$900.00 and a pet damage deposit of \$500.00 were paid by the tenant and the former landlord returned both deposits to the tenant. The rental unit is the upper level of a house, which has a separate basement suite.

The tenant claimed that he vacated the rental unit pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property, dated August 27, 2020 ("2 Month Notice"). He stated that the notice had an effective move-out date of November 1, 2020.

The tenant provided a copy of the 2 Month Notice for this hearing. The tenant confirmed that the reason indicated on the notice is:

- *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 seeks compensation under section 51(2) of the Act for 12 months' rent compensation of \$1,872.00, totaling \$22,464.00, plus the \$100.00 filing fee.

The tenant stated the following facts. The landlord bought the rental unit from the former landlord. The landlord told the tenant that he could stay at the rental unit. The landlord then told the tenant to move out, so the tenant left as per the 2 Month Notice. The tenant got a copy of the buyer's notice to seller for vacant possession, which says that the landlord wants vacant possession of the rental unit on November 1, 2020. The tenant spent a lot of money on movers to vacate the rental unit. The landlord never moved into the rental unit. The tenant drove by the rental unit every 5 to 10 days and there were no garbage cans or cars at the property. The occupant living in the basement of the rental property picked up some mail, opened it by accident, and gave a copy of it to the tenant. The mail was a hydro notice, dated January 12, 2021, which says there is no hydro at the rental unit. No one can live at the rental unit unless there is hydro there.

Analysis

Section 49(5) of the Act states the following:

- (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* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the landlord or purchaser does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

51 (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

(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 make the following findings, on a balance of probabilities, based on the testimony and evidence of the tenant. The tenant vacated the rental unit on November 1, 2020, pursuant to the 2 Month Notice.

The tenant did not dispute that the former landlord sold the rental unit to the landlord and the landlord asked for vacant possession of the rental unit in order for the landlord or a close family member to occupy the unit. The tenant provided a written copy of the buyer's notice to seller for vacant possession, dated August 26, 2020. This notice confirms that the rental unit was sold from the former landlord to the landlord, pursuant to a contract of purchase and sale, dated August 11, 2020, and that the landlord wanted vacant possession of the rental unit, effective on November 1, 2020.

The tenant disputes that the landlord or a close family member occupied the rental unit. I find that the tenant did not provide sufficient documentary or witness evidence that steps have not been taken, within a reasonable period after the effective date of the notice, for the landlord or a close family member to occupy the rental unit or that the landlord or a close family member did not occupy the rental unit for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I do not find the tenant's testimony, that he drove by every 5 to 10 days and did not see garbage cans or cars, to prove that no one occupied the rental unit. The tenant did not provide any specific dates of when he drove by the rental unit. I do not find the absence of garbage cans or cars to prove that a rental unit is vacant.

The hydro letter, dated January 12, 2021, provided by the tenant, is addressed to "owner or occupant." It does not indicate the name of the tenant or the landlord but has the rental unit address on it. I do not know whether this is an authentic letter from the BC Hydro company, as the tenant only submitted a photograph of it. The tenant claims to have received this letter from an occupant living in the basement, who did not testify at this hearing as a witness, to authenticate this letter or the fact that she received it and provided it to the tenant.

The hydro letter states the following, in part (emphasis in original letter):

"Please register for a BC Hydro account to avoid disconnection

We wanted to alert you that there's currently no BC Hydro account registered at this address. You'll need to register for a BC Hydro account to prevent a disconnection of electrical service..."

The above letter states that there is electrical service to the rental unit but that the owner or occupant must register for a BC Hydro account to avoid disconnection of electrical service. It does not state what the tenant claimed during the hearing, that there is no hydro service at the rental unit.

The above letter confirms that there was electrical hydro service at the rental unit, as of January 12, 2021, which is over two months after the tenant vacated the rental unit on November 1, 2020. I find that this refutes the tenant's claims that the rental unit was vacant or that the landlord or a close family member did not occupy the rental unit.

Accordingly, I dismiss the tenant's application for 12 months' rent compensation of \$22,464.00, without leave to reapply.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's entire application is dismissed 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: May 21, 2021

Residential Tenancy Branch