



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 18, 2021 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed.

The Tenant appeared at the hearing. Landlords N.S. and K.S. appeared at the hearing with Legal Counsel. Landlords N.S. and K.S. and Legal Counsel appeared at the hearing 10 minutes late. Landlords N.S. and K.S. and Legal Counsel did not appear for Landlord S.H. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant and Landlords N.S. and K.S. provided affirmed testimony.

Both parties submitted evidence prior to the hearing.

Legal Counsel and Landlords N.S. and K.S. confirmed receipt of the hearing package and Tenant’s evidence.

The Tenant testified that the hearing package and her evidence were sent to Landlord S.H. by registered mail to the address for S.H. on the Two Month Notice to End Tenancy for Landlord’s Use of Property served during the tenancy. The Tenant confirmed Tracking Number 1 relates to this package. The Tenant submitted the customer receipt for this as well as Canada Post tracking information showing S.H. signed for the package January 28, 2021.

Based on the undisputed testimony of the Tenant, customer receipt and Canada Post tracking information, I am satisfied Landlord S.H. was served with the hearing package and Tenant’s evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential*

Tenancy Act (the “*Act*”). Based on the Canada Post tracking information, I am satisfied Landlord S.H. received the hearing package and Tenant’s evidence on January 28, 2021. Based on the Canada Post tracking information for Tracking Number 1 online, I am satisfied the hearing package and Tenant’s evidence were sent January 21, 2021 and find the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

Landlords N.S. and K.S. submitted an Affidavit of Service stating that their evidence was served on the Tenant in person May 14, 2021. Based on the Affidavit of Service, I am satisfied the Tenant was served with Landlords N.S. and K.S.’s evidence in accordance with section 88(a) of the *Act*. Landlords N.S. and K.S. did not comply with rule 3.15 of the Rules in relation to the timing of service as their evidence was served one day late. However, the Tenant did not raise the timing of service as an issue at the hearing and therefore I have considered the evidence of Landlords N.S. and K.S.

Given I was satisfied of service, I proceeded with the hearing in the absence of Landlord S.H. The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and the testimony and submissions of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?

Background and Evidence

The Tenant sought \$14,400.00 in compensation pursuant to section 51 of the *Act* based on the Landlords failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord’s Use of Property dated March 05, 2020 (the “Notice”).

The parties agreed on the following. There was a written tenancy agreement between the Tenant and Landlords N.S. and K.S. The tenancy started in December of 2015. The tenancy was for a fixed term of one year and then became a month-to-month tenancy. Rent was \$1,200.00 per month due on the first day of each month.

The Tenant testified that the tenancy ended May 31, 2020.

The parties agreed that Landlords N.S. and K.S. were the owners of the rental unit and were the Tenant's landlords. The parties agreed Landlords N.S. and K.S. sold the rental unit to a numbered company associated with Landlord S.H.

The Notice was submitted. The Notice was issued by Landlords N.S. and K.S. The grounds for the Notice are 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 the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The Notice lists the purchaser as a numbered company and S.H.

A "Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession" form was submitted. The form is addressed to Landlords N.S. and K.S. The form relates to the rental unit. The form requests that Landlords N.S. and K.S. issue the Notice. The form indicates that Landlord S.H. is the purchaser.

The parties agreed the Notice was served on the Tenant during the tenancy.

The Tenant testified as follows. The rental unit remained empty after she moved out. Nobody moved into the rental unit after she moved out. She moved into a new place close to the rental unit and stopped by the rental unit every week to check for mail. She could see that nobody had moved into the rental unit and that it remained empty. The rental unit was empty for eight to nine months and then was torn down. A four-plex is currently being built where the rental unit was. The rental unit was re-sold September 15, 2020. She found that there was a demolition permit for the rental unit two days after Landlord S.H. was supposed to take possession of the rental unit.

Legal Counsel made the following submissions. Landlords N.S. and K.S. were given the "Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession" form and had been asked to serve the Notice. Landlords N.S. and K.S. do not know what happened in relation to title for the rental unit after the Landlords sold the rental unit. Landlords N.S. and K.S. had no control, or even knowledge, of whether the purchaser fulfilled their obligations pursuant to the Notice. Compensation should only be awarded against the person who defaulted in relation to the Notice. Landlords N.S. and K.S. had a contract to sell the rental unit to the numbered company noted on the Notice. Pursuant to the contract, the purchaser could assign the contract without the seller's consent. The contract was assigned to another numbered company. Landlords N.S. and K.S. did not have advance notice that the contract was assigned and only found out about this on the closing date. Landlords N.S. and K.S. did not know Landlord S.H. and had no idea what he planned to do with the rental unit. The Tenant is correct that the

rental unit was again transferred in September of 2020; however, Landlords N.S. and K.S. were not aware of this.

In reply, the Tenant made the following submissions. She questions how Landlords N.S. and K.S. can say Landlord S.H. would follow through with the Notice when they allowed the contract of purchase and sale to be assigned. Nobody ever came to look at the rental unit when it was for sale. The potential purchasers of the rental unit were developers. Landlord K.S. told her a developer would buy the rental unit.

In response, Landlord K.S. denied knowing the purpose for which the rental unit would be purchased and said she does not recall a conversation with the Tenant about this.

The Tenant submitted rent receipts, the Notice, the “Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession” form, a title search for the rental unit, a screen shot about a demolition permit, a screen shot showing the rental unit sold September 15, 2020 and a letter dated January 14, 2020 from a neighbour of the rental unit stating that it had been unoccupied since June 01, 2020.

Landlords N.S. and K.S. submitted written submissions, the Contract of Purchase and Sale and documents related to the sale of the rental unit including the “Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession” form.

Analysis

The Notice was issued pursuant to section 49(5) of the *Act* which 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 of the *Act* sets out compensation due to a tenant served with a notice to end tenancy issued under section 49 of the *Act* and states:

(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.

(3) 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

(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.

I note at the outset that the good faith requirement in relation to serving a notice to end tenancy pursuant to section 49 of the *Act* is not an issue before me. Whether a landlord is serving a notice to end tenancy in good faith is an issue when a tenant disputes the notice. Here, the Tenant is not disputing the Notice, the Tenant is seeking compensation pursuant to section 51 of the *Act*. Pursuant to section 51(2) of the *Act*, the issue before me is whether the Landlords followed through with the stated purpose of the Notice as required and, if not, whether there were extenuating circumstances.

Based on the submissions of Legal Counsel and the “Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession” form submitted, I am satisfied Landlord S.H. asked in writing that Landlords N.S. and K.S. serve the Notice. I am satisfied Landlords N.S. and K.S. were simply doing what was requested of them when they served the Notice. I am not satisfied Landlords N.S. or K.S. did anything wrong, or contrary to the *Act*, in serving the Notice. I agree that Landlords N.S. and K.S. did not have control over whether Landlord S.H. followed through with the stated purpose of the Notice, which is the issue before me. Nor do I find it the responsibility of Landlords N.S. and K.S. to ensure Landlord S.H. followed through with the stated purpose of the Notice. In the circumstances, I agree Landlords N.S. and K.S. should not be named as respondents on the Application. It is not Landlords N.S. and K.S. who failed to follow through with the stated purpose of the Notice as the purpose of the Notice related to what Landlord S.H. or the numbered company intended to do with the rental unit. In the circumstances, I have removed Landlords N.S. and K.S. from the Monetary Order issued.

In relation to Landlord S.H., as stated, I am satisfied based on the submissions of Legal Counsel and the “Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession” form that Landlord S.H. gave Landlords N.S. and K.S. the “Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession” form and therefore requested that they issue the Notice. Pursuant to the “Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession” form and the Notice, I find the Notice was issued on the basis that the numbered company and/or Landlord S.H., or a close family member of either, intended in good faith to occupy the rental unit.

I am satisfied based on the undisputed testimony of the Tenant and the documentary evidence submitted by the Tenant that Landlord S.H., or a close family member of Landlord S.H. or the numbered company, did not occupy the rental unit within a reasonable period after the effective date of the Notice or for at least six months beginning within a reasonable period after the effective date of the Notice. Therefore, I am satisfied Landlord S.H. did not follow through with the stated purpose of the Notice.

Nobody appeared at the hearing for Landlord S.H. and therefore I am not satisfied there were extenuating circumstances.

Given the above, I am satisfied section 51(2) of the *Act* applies. Landlord S.H. must pay the Tenant compensation equivalent to 12 months rent pursuant to section 51(2) of the *Act*.

The parties agreed rent at the end of the tenancy was \$1,200.00 and therefore the Tenant is entitled to \$14,400.00. I issue the Tenant a Monetary Order in this amount.

Conclusion

The Application is granted as it relates to Landlord S.H. The Tenant is entitled to \$14,400.00. I issue the Tenant a Monetary Order in this amount. This Order must be served on Landlord S.H. and, if Landlord S.H. does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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

Dated: June 15, 2021

Residential Tenancy Branch