



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants April 19, 2021 (the “Application”). The Tenants applied as follows:

- For compensation from the Purchaser related to a Two Month Notice to End Tenancy for Landlord’s Use of Property dated February 28, 2020 (the “Notice”)
- To recover the filing fee

The Tenant and Tenant S.M. appeared at the hearing and appeared for Tenants A.N. and L.M. The Purchaser appeared at the hearing. 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 parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Preliminary Issue: Co-tenants or Tenants in Common

The Application names four tenants, the Tenant, S.M., A.N. and L.M., all of whom lived in the rental unit at the end of the tenancy. During the hearing, an issue arose as to whether the Tenants were co-tenants or tenants in common.

There was no written tenancy agreement submitted as evidence.

There was a prior RTB decision in relation to the Notice submitted. The prior decision related to all four Tenants and stated as follows about a tenancy agreement between them and the previous landlord (at page 2):

The Parties agreed that the periodic tenancy began on May 1, 2012, with a monthly rent of \$575.00 per Tenant, due on the first day of each month. The Parties agreed that each Tenant paid the Landlord a security deposit of \$250.00, and no pet damage deposit.

The Tenant testified as follows. They moved into the rental unit in 2012. There were four people living in the rental unit when the Tenant moved in. When a tenant of the rental unit moved out, another tenant would replace them. S.M. moved into the rental unit in 2013. A.N. moved into the rental unit in August of 2016. Rent was \$550.00 per person when the Tenant moved into the rental unit and was increased to \$575.00 per person during the tenancy. The Tenant never had a direct conversation with the previous landlord of the rental unit about a tenancy agreement. The Tenant paid rent directly to the previous landlord of the rental unit. None of the tenants of the rental unit were responsible to pay rent for the entire house, each tenant paid rent separately to the previous landlord. The Tenant did pay utilities for the entire house, including a separate downstairs suite, and collected money from the other tenants for this. It is possible that each of the Tenants received their own Two Month Notice to End Tenancy for Landlord's Use of Property. The previous landlord only communicated with the Tenant about tenancy issues such as rent increases.

S.M. testified as follows. Each tenant of the rental unit paid a separate security deposit of \$250.00 to whomever was moving out of the rental unit. The previous landlord kept the original \$250.00 paid for a security deposit and new tenants would pay their \$250.00 to the tenant they were replacing. S.M. believes each of the Tenants received their own Two Month Notice to End Tenancy for Landlord's Use of Property. L.M. moved into the rental unit in May of 2018. All tenancies were month-to-month tenancies. All rent was due on the first day of each month. Nobody paid a pet damage deposit.

The parties agreed that all Tenants moved out of the rental unit May 17, 2020.

The Purchaser testified as follows. They purchased the rental unit from the previous owner. They were not the Tenants' landlord. There was no signed agreement between the parties. The Tenants did not pay rent to the Purchaser. They do not know who the Tenants are. The Notice was served by the previous owner. The previous owner said

there was no formal tenancy agreement. Roommates moved in and out of the rental unit over time. The previous owner did not know who was living in the rental unit at any given time. Roommates do not have recourse through the RTB because occupants have no rights or obligations under the *Act*. The Arbitrator in the previous RTB decision issued an Order of Possession for May 31, 2020. They do not know further details about prior tenancy agreements between the tenants and previous owner.

The Notice submitted is only addressed to the Tenant.

Policy Guideline 13 deals with the rights and obligations of co-tenants and states in part:

B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the **same tenancy agreement**. Generally, co-tenants have equal rights under their agreement and are **jointly and severally responsible for meeting its terms**, unless the tenancy agreement states otherwise. **“Jointly and severally” means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.**

C. PAYMENT OF RENT

Co-tenants are jointly and severally responsible for payment of rent when it is due...**The onus is on the tenants to ensure that the full amount of rent is paid when due...**

G. TENANTS SHARING COMMON SPACE

Sometimes tenants under separate tenancy agreements share common space. Each tenant is responsible for the obligations established under their own tenancy agreement and is not responsible for debts or damages relating to the other tenancy.

An example of tenants sharing common space is two tenants renting rooms under separate tenancy agreements on the same floor of a home and sharing a common bathroom and living room. The tenancy agreements for each tenant state that they are **individually responsible for paying rent for their respective tenancies and both tenants paid separate security deposits to the landlord.**

If one tenant causes damage to their rental unit, or fails to pay rent, the other tenant bears no responsibility for those damages or debt. If one tenant ends their tenancy with the landlord, the other tenant's tenancy will be unaffected. The tenant who ended their tenancy can ask for the return of their security deposit from the landlord whether the other tenant decides to continue their tenancy.

Where multiple people live in a rental unit and **pay part of the rent** to the landlord, there is a presumption that they are co-tenants unless there is compelling evidence to the contrary. Evidence such as separate tenancy agreements for each person, rent receipts, or **receipts for different security deposits** may help indicate whether the tenants are co-tenants, tenants sharing common space, or occupants.

(emphasis added)

I acknowledge that there was a prior RTB decision in relation to the Notice and that all four Tenants applied together to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property. However, the issue of whether the four Tenants were co-tenants or tenants in common was not raised or decided by the prior Arbitrator and therefore it is open to me to decide this issue.

I find the four Tenants were not co-tenants and were tenants in common because they all moved into the rental unit at separate times, they paid rent separately directly to the previous landlord, none of the Tenants were responsible to pay the total rent for all four Tenants, they paid separate security deposits and it is likely that each received their own Two Month Notice to End Tenancy for Landlord's Use of Property.

In relation to the Purchaser's submissions, I note the following. It is not necessary that there was a tenancy relationship between the Tenants and the Purchaser because the Purchaser purchased the rental unit and provided the previous landlord with the following letter submitted in evidence:

As I am purchasing the above noted property, I request that you, as the seller, please provide 2 month's notice to end tenancy to your tenant for [rental unit address]. I plan to occupy the home effective May 01, 2020.

Section 51 of the *Residential Tenancy Act* (the "*Act*") states as follows:

(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 the landlord **or purchaser**, as applicable, does not establish that...

Section 51 of the *Act* incorporates purchasers and therefore the Tenants are entitled to file a claim against the Purchaser.

The absence of a formal tenancy agreement between the Tenants and previous landlord does not mean there were no tenancies as the definition of a "tenancy agreement" in section 1 of the *Act* includes verbal agreements. I am satisfied there were tenancy agreements between the Tenants and previous landlord because the Tenants paid rent directly to the previous landlord in exchange for living in the rental unit. Further, the previous landlord issued the Notice which would only be relevant to a tenancy under the *Act* which supports that there were tenancy agreements between the Tenants and previous landlord. As well, the previous landlord was at the prior RTB hearing and it appears from the paragraph already quoted above that the previous landlord agreed there were tenancy agreements between them and the Tenants.

In relation to occupants having no rights or obligations under the *Act*, this is correct. However, I do not find that the Tenants were occupants. I find the Tenants had tenancy agreements with the previous landlord. My finding is simply that the Tenants had separate tenancy agreements with the previous landlord and were not co-tenants. It is the relationship between the Tenants and previous landlord that is relevant and I find these were tenancy relationships.

As stated above, I find the Tenants were tenants in common and therefore the Tenants were not permitted to file one Application for Dispute Resolution as they all had separate tenancy agreements with the previous landlord. I have considered the Application as it relates to the Tenant because they were the primary applicant and because the Notice submitted in evidence was issued to the Tenant. I will not consider

the Application as it relates to the remaining Tenants. The Application as it relates to the remaining Tenants is dismissed with leave to re-apply. This decision does not extend and time limits set out in the *Act*. I note that parties can come to an agreement about their disputes outside of the RTB hearing process and I urge the parties to consider this prior to making further Applications for Dispute Resolution.

Issues to be Decided

1. Is the Tenant entitled to compensation from the Purchaser in relation to the Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant sought \$27,700.00 in compensation pursuant to section 51 of the *Act* based on the Purchaser failing to follow through with the stated purpose of the Notice.

The Notice states the following ground:

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.

The Purchaser is named as the purchaser on the Notice.

The parties agreed the Notice was served on the Tenant.

The parties agreed the effective date of the Notice was corrected to May 31, 2020 in the prior RTB decision.

The Tenant and S.M. took the following position. The Purchaser failed to fulfill the stated purpose on the Notice within a reasonable amount of time. The rental unit was not occupied by the Purchaser until November of 2020. The Purchaser conducted major renovations between May and November of 2020. Building permits for the rental unit have been submitted showing they took effect in May or June of 2020 and were closed out after the final inspection in November of 2020. The building permits submitted indicate the type of renovations done to the rental unit. In May and June of 2020, the lawn of the rental unit was overgrown and nobody was living there. The

photos in evidence show renovations occurring from July to November of 2020. The photos show that a wall in the rental unit was removed during the renovations. The photos show bathtubs were removed during the renovations. It would have been easier for the Purchaser to live elsewhere while the renovations were taking place. If the Purchaser was living in the rental unit prior to November of 2020, one would expect to see photos to support this, receipts for movers or a rental van and receipts for the renovations done.

The Purchaser took the following position. They purchased the rental unit for their family to live in. They updated the rental unit while they were living in it. Building permits can take six to 12 months to approve. The building permits obtained were for standard home renovations. They have submitted mail showing it was sent to them at the rental unit address. They have submitted their driver's licence with the rental unit address on it. They have submitted the 2020 Property Tax Notice which was sent to them at the rental unit. They had a newborn baby May 18, 2020 and were in and out of the hospital for quite a while. The rental unit is a house with two separate suites, both of which were left vacant for the Purchaser. The lower suite was never re-rented. They left the lower suite empty in case they needed to use the kitchen or bathroom while the upstairs was being renovated. The photos submitted by the Tenant do not prove whether the rental unit was vacant or occupied. The lawn being overgrown in May does not prove anything. Just because they did not mow the lawn does not mean the rental unit was not occupied. As well, they were in and out of the hospital at that time.

In response to my questions, the Purchaser testified as follows. They started moving into the rental unit June 15, 2020. The rental unit has been their primary residence since June 15, 2020 and they have occupied the entire house including the upper and lower suites. They did not submit receipts for movers or a moving van because they did not have a lot to move and they used their SUV to move. In relation to larger furniture, they ordered new furniture for the home. They have receipts for these furniture orders but did not submit them. They could have sent photos to support their position; however, they did not think these would be relevant. They do not deny that renovations were done to the rental unit; however, they lived in the rental unit while the renovations were being done. They cannot point to anything in the photos of the rental unit submitted by the Tenants to support that they were living in the rental unit when the photos were taken.

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...

Section 51 of the *Act* sets out compensation due to tenants 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 the landlord or purchaser, as applicable, does not establish that
 - (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
 - (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been 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 applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The issue here is when the Purchaser moved into the rental unit. The Tenant takes the position that the Purchaser did not move into the rental unit until November of 2020. The Purchaser testifies that they moved into the rental unit June 15, 2020.

Pursuant to section 51(2) of the *Act*, the Purchaser has the onus to prove that they occupied the rental unit within a reasonable period after May 31, 2020, the corrected effective date of the Notice. Pursuant to rule 6.6 of the Rules, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Given the conflicting testimony of the parties in relation to when the Purchaser moved into the rental unit, I have focused on the documentary evidence submitted to support each position.

I find that the photos submitted by the Tenant tend to support their position that the Purchaser did not move into the rental unit until November of 2020. The photos show an overgrown yard in May and June. An overgrown yard is not conclusive proof that the rental unit was vacant; however, it does tend to support the position that the rental unit was vacant. The photos show renovations occurring at the rental unit such as removal of bathtubs in July, the house painted in August, a new deck installed in September, a new front door in October, renovation material visible inside a window in October, construction equipment set up in front of the house in October, new windows being installed in October and a remodelled kitchen in October. I note that the Purchaser agreed renovations were done to the rental unit. I note that the photos were taken over a period of six months and yet the Purchaser could not point to anything in the photos that supported their position that the rental unit was their primary residence during that time. I also note that the photos do show personal items in a window of the rental unit on November 20, 2020.

I find that the building permit evidence does tend to support the Tenant's position as it supports that renovations were done to the rental unit. The building permit evidence shows that inspections of the rental unit were conducted in May, July, August, September and November of 2020 with the final inspection conducted December 03, 2020. I accept the submission of the Tenant and S.M. that it would have been easier for the Purchaser to live elsewhere while the renovations were taking place as I find this accords with common sense.

The only documentary evidence the Purchaser submitted to support their position is the following:

- Typed notes about a police file
- A photo of a gas meter
- The birth certificate of their child showing they were born May 18, 2020
- Their driver's licence with a sticker on it showing the address of the rental unit
- Mail addressed to the Purchaser with the rental unit address on it
- 2020 Property Tax Notice dated May 26, 2020

The only documentary evidence I find relevant to the issue of when the Purchaser moved into the rental unit is the following:

- Their driver's licence with a sticker on it showing the address of the rental unit
- Mail addressed to the Purchaser with the rental unit address on it
- 2020 Property Tax Notice dated May 26, 2020

However, there is no issue between the parties that the Purchaser has lived at the rental unit address at least since November of 2020. The Application was filed April 19, 2021 and the Purchaser uploaded their evidence October 06, 2021. Given the timing, I do not find undated evidence of the Purchaser living in the rental unit compelling as both parties agree the Purchaser had lived at the rental unit for at least five months when the Application was filed and at least 11 months when the Purchaser's evidence was uploaded.

I cannot tell from the evidence submitted when the Purchaser updated their driver's licence to include the rental unit address as this information has not been provided. There are no dates showing on the driver's licence. Therefore, I do not find the driver's licence to be compelling evidence of when the Purchaser moved into the rental unit.

The mail addressed to the Purchaser with the rental unit address on it is not dated and therefore is not compelling evidence of when the Purchaser moved into the rental unit.

The Property Tax Notice is dated May 26, 2020 and includes the Purchaser's name and the rental unit address. However, I am not satisfied the Property Tax Notice is compelling evidence of when the Purchaser moved into the rental unit. The Purchaser owned the rental unit on May 26, 2020 and therefore it would not be unusual for the Property Tax Notice to be sent to the rental unit with the Purchaser's name on it regardless of whether the Purchaser resided there. More importantly, the Purchaser themselves testified that they moved into the rental unit June 15, 2020, after the Property Tax Notice was sent to the rental unit. Given this, I find no connection between the date on the Property Tax Notice and the date the Purchaser moved into the rental unit. The May 26, 2020 date does not support either a June 15, 2020 or November 2020 move-in date as it preceded both dates.

In the circumstances, I find the Tenant has submitted some documentary evidence that tends to support their position that the Purchaser did not move into the rental unit until November of 2020. I find the Purchaser has not submitted compelling evidence showing they moved into the rental unit June 15, 2020. In the circumstances, I find it more likely than not that the Purchaser moved into the rental unit in November of 2020.

The corrected effective date of the Notice was May 31, 2020. I find the Purchaser moved into the rental unit in November of 2020, six months later. I do not find six months to be "within a reasonable period" as required by section 51(2)(a) of the *Act* as six months is a lengthy period of time.

I do not find it necessary to consider extenuating circumstances pursuant to section 51(3) of the *Act* because the Purchaser did not raise this as an issue. The Purchaser did not take the position that they failed to follow through with the stated purpose of the Notice within a reasonable period after the effective date of the Notice for some reason. The Purchaser took the position that they followed through with the stated purpose of the Notice on June 15, 2020; however, the Purchaser has failed to establish this.

I find the Purchaser has failed to establish that the stated purpose for ending the tenancy, that they would occupy the rental unit, was accomplished within a reasonable period after the effective date of the Notice and therefore the Purchaser must pay the Tenant the equivalent of 12 times the monthly rent. I accept the undisputed testimony

of the Tenant that rent was \$575.00 at the end of the tenancy and award the Tenant \$6,900.00 pursuant to section 51(2) of the *Act*.

As the Tenant was successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$7,000.00 and I issue the Tenant a Monetary Order in this amount. I note that the Monetary Order has only been issued in the name of the Tenant given the decision above as it relates to the remaining Tenants.

Conclusion

The Application is granted. The Tenant is entitled to \$7,000.00 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Purchaser and, if the Purchaser 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: October 27, 2021

Residential Tenancy Branch