



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 12, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order granting the return of the filing fee.

The Tenant and the Purchaser's Agents K.I. and P.K. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective Application and documentary evidence packages. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The Tenant testified the tenancy began on February 1, 2019. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,800.00 which was due to the Seller on the first day of each month. The tenancy ended on October 31, 2020 once the Tenant vacated the rental unit. The Tenant provided a copy of the tenancy agreement in support.

The Purchasers' Agents testified that the Purchasers purchased the rental property in May 2020 with the intent to demolish the rental unit. The Purchasers' Agents stated that the contract of sale includes a term that the Purchasers require vacant possession of the rental unit. The Purchasers' Agents stated that the Tenant should have been served with a Four Month Notice to End Tenancy for Demolition, however, the parties confirmed that the Seller severed the Tenant with the Two Month Notice dated August 28, 2020 with an effective vacancy date of October 31, 2021 (the "Two Month Notice"). The reason for ending the tenancy on the Two Month Notice was;

"All the conditions of 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 Tenant stated he complied with the Two Month Notice and vacated the rental unit on October 31, 2020. The Tenant stated that the Purchasers did not occupy the rental unit before demolishing the rental unit. The Tenant provided a copy of the Two Month Notice along with the "Buyers Notice to Seller for Vacant Possession". I note that the Buyers Notice to Seller is signed by both Purchasers and states that all the conditions of 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 Tenant stated that as the Purchasers did not accomplish the stated purpose of the Two Month Notice, the Tenant is therefore claiming for compensation equivalent to 12 times the monthly rent in the amount of \$21,600.00.

The Purchasers' Agents stated that the purchasers had no intent on occupying the rental property, instead, their intent was to demolish the rental unit. The Purchasers' Agents stated that the Purchasers did not understand what they were signing when they were presented with the "Buyers Notice to Seller for Vacant Possession". Furthermore, the Purchasers' Agents stated that the Two Month Notice does not include the Purchaser's addresses, therefore, is not in the approved form. As such, the remedies under Section 51 should not apply.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2). Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

I accept that the Purchasers intended to demolish the rental property, however, I find that they did not serve the proper Notice to End Tenancy in order to do so. Instead, I find the Purchasers provided the Seller with a Buyers Notice to Seller for Vacant Possession which was signed by the purchasers and states that all the conditions of 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 Purchasers' Agents stated that the Two Month Notice lacked the Purchasers address, therefore, making the Two Month Notice invalid and that remedies under Section 51 are not applicable. I find that the Tenant's Application does not relate to disputing the validity of the Two Month Notice. I accept that there was an issuance of the Two Month Notice by the Seller, and an acceptance of the Notice by the Tenant. I accept that the Tenant complied with the Two Month Notice. The Tenant's Application for compensation has not to do with the validity of the Notice, instead, it has to do with if the Purchasers accomplished the stated purpose of the Two Notice.

I find that the Purchasers did not occupy the rental unit, instead they demolished the rental unit, which was not the intended purpose of the Two Month Notice. Furthermore, I find that the Purchasers provided insufficient evidence to demonstrate that an extenuating circumstance prevented them from accomplishing the intended purpose of the Two Month Notice.

Based on the above, I find that the Tenant is entitled to $(\$1,800.00 \times 12 \text{ months} = \$21,600.00)$ in compensation from the Purchasers, pursuant to section 51(2) of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$21,600.00.

Conclusion

The Purchasers have not taken steps to accomplish the stated purpose for ending the tenancy under section 49 for at least six months after the effective date of the Two Month Notice. Pursuant to section 51 and 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$21,600.00.

The Tenant is provided with this Order in the above terms and the Purchasers must be served with this Order as soon as possible. Should the Purchasers 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.

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: November 23, 2021

Residential Tenancy Branch