



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on November 15, 2021. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51 of the Act; and,
- recovery of the filing fee.

The Landlord was represented at the hearing by legal counsel. Both Tenants attended the hearing. The Tenants provided affirmed testimony. The Landlord's Legal Counsel was given an opportunity to present statements and evidence. Both parties confirmed receipt of each other's documentation and evidence. No issues were raised with respect to service. I find both parties sufficiently served each other with their respective documentation and evidence.

All parties were provided the 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.

Preliminary Matters

The Landlord's legal counsel requested an adjournment at the outset of the hearing because the Landlord was unable to drive into his law office to participate in the hearing. I asked the Landlord's counsel why the Landlord was unable to dial into the

hearing via telephone, as all the other participants had done. However, no clear answer or explanation was given. I am satisfied that the Landlord could have attended the conference call, remotely, had he wished to, as there is insufficient evidence that there was anything preventing him from doing so. I also note the Landlord's counsel noted that the Landlord had been in touch with him earlier in the day to say he would not be attending the office, which suggests he had access to a telephone. The Landlord's counsel appeared able to communicate with the Landlord earlier in the day, and it is unclear why the Landlord could not have prepared for the hearing, or attended the hearing, via telephone. The Landlord's counsel appeared willing and able to present arguments and evidence.

Ultimately, I am not satisfied an adjournment is necessary and appropriate. I find the Landlord still had representation at the hearing, and I find there is little to no evidence to support that an adjournment would facilitate this dispute resolution. The Tenants wished to proceed, and felt they had waited long enough for the hearing. I find there is potential prejudice if the hearing is adjourned further.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

A copy of the Tenancy Agreement was provided into evidence, along with the Notice of Rent Increase. Monthly rent was set at \$1,742.00 at the end of the tenancy. The Tenants explained that the subject rental unit (house) sold in late 2020, and was purchased by the Landlord named on this application. The Tenant's original Landlord (herein referred to as the "Seller") issued the Tenants a 2 Month Notice to End Tenancy on or about December 23, 2020, on behalf of the Landlord, along with a copy of an email request from the Landlord's real estate agent, requesting vacant possession of the newly purchased home.

A copy of the Notice was provided into evidence which lists the following grounds for ending the tenancy:

- 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 Landlord named on this application was listed as the purchaser, and the individual who requested vacant possession of the rental unit, effective March 1, 2021.

The Landlord's counsel stated that the Landlord never had any intentions of moving into the rental unit, and never requested vacant possession so that he or his family could occupy the unit. The Landlord's counsel stated that the Landlord only ever requested vacant possession of the rental unit for the purposes of re-renting the unit. The Landlord's counsel stated that the Landlord's real estate agent asked the seller to issue this 2 Month Notice without the Landlord's approval. The Landlord's counsel stated that the Landlord does not feel he should be responsible for having to pay compensation, since he never told his realtor that he wanted to move into the unit himself (or have close family move in).

A copy of the Contract of Purchase and Sale was provided into evidence, which shows that the Landlord bought the house, and that sale completed on January 15, 2021. Under the heading "possession", the contract notes that the buyer will have vacant possession of the property at 11:00 am on January 16, 2021, or subject to the following tenancies (with existing tenants noted on a month-to-month tenancy agreement).

The letter that was attached to the 2 Month Notice, confirming that the purchaser requested vacant possession via a 2 Month Notice, was provided into evidence. It shows that on December 7, 2020, an individual named G.C. sent an email to the Seller's realtor asking for the Tenants to be served with a 2 Month Notice. The Landlord's counsel confirmed that G.C. was the Landlord's agent at that time for purchasing the house. Subsequently, the Seller's realtor received this written request from G.C. and forwarded a copy of this written email request to the seller, so that this written request could be attached to the 2 Month Notice when it was served to the Tenants.

The Landlord's counsel does not deny that the property was re-rented, and stated that this was the plan the whole time, and that the 2 Month Notice should never have been issued by the Landlord's real estate agent.

Analysis

The Tenants are seeking 12 months' worth of rent as compensation based on the Notice, pursuant to section 51(2) of the Act. I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlord to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice. The Notice was issued and received by the Tenants on or around December 23, 2020. The Landlord selected 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.

I note the Landlord's counsel argued that the Landlord should not be liable for this claim because it was the Landlord's real estate agent who requested the 2 Month Notice to be issued. The Landlord's counsel stated that the Landlord never actually intended to move in, nor did he specifically ask his agent to request vacant possession so that he or a family member could move in.

I have reviewed the testimony and evidence on this matter, and I note that the Notice was issued to the Tenants alongside a printed copy of the written email chain requesting that this 2 Month Notice be issued. The Landlord's counsel confirmed that the individual who sent the written request for the Seller to issue the 2 Month Notice was in fact the Landlord's real estate agent at the time. Although the email from the Landlord's agent did not directly state that the Landlord wanted to move in, it did request that the Tenants be given a 2 Month Notice. Since the Landlord had not actually purchased the subject property at the time this request was made, the only ground applicable and available on the 2 Month Notice for this type of situation was the ground that was selected. In other words, as a purchaser, there is one ground available on the 2 Month Notice, which is the ground that was selected. In any event, there is no dispute that G.C. was the Landlord's agent during the material time, when the Notice was issued. I find the Landlord is liable for the request made by his agent regarding issuing this 2 Month Notice.

If the Landlord believes that his agent erred or acted improperly in discharging his duties, he may wish to pursue a separate claim against his agent under a court of competent jurisdiction.

In this case, the Tenants moved out because they were served with a 2 Month Notice pursuant to section 49(5)(c). I find the Notice meets the form and content requirements under the Act, and I accept that the Tenants chose to move out in accordance with this Notice, rather than dispute it, and try to continue the tenancy. Regardless, the Landlord is responsible for fulfilling the grounds selected on the Notice, regardless of whether it was him, or his agent who requested the 2 Month Notice be issued. If the Landlord fails to perform the stated purpose, he is liable for compensation pursuant to section 51 (2) of the Act. In this case, there is no dispute that neither the Landlord, nor his close family, moved into the property. Rather the Landlord re-rented the unit, immediately following the Tenants' departure on March 1, 2021.

As such, it is clear that the Landlords breached section 51 of the Act, which typically entitles the Tenants to 12 month's compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

I note the Landlord's counsel suggested that the Landlord's agent erred in asking for the seller to issue this 2 Month Notice. However, I do not find any of the circumstances presented or explained are extenuating, such that it would be unreasonable or unjust for the Landlord to pay the compensation due. I find there is insufficient evidence to support that the Landlord ought to be excused from paying the compensation due to the Tenants following his breach of section 51(2) of the Act.

I award the Tenants \$20,904.00, pursuant to section 51(2) of the Act, which is 12 times her rent of \$1,742.00.

As the Tenants were successful with this application, I also grant the recovery of the filing fee (\$100.00) against the Landlord, pursuant to section 72 of the Act.

Conclusion

I grant the Tenants a monetary order in the amount of \$21,004.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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 16, 2021

Residential Tenancy Branch