



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 an Application for Dispute Resolution by the tenant for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property and to recover the cost of the filing fee.

The tenant, and the respondent JY representing the named company appeared. The respondent AD did not appear. Therefore, I must consider service of the Notice of Dispute Resolution Hearing. The tenant stated that the documents were sent by registered mail on June 18, 2021, which were successfully delivered to AD on June 30, 2021. The Canada post online history shows the signature of AD. I find AD was served on June 30, 2021, in accordance with the Act.

Preliminary Issues

JY stated that they were the property manager and were not involved in the contract to purchase the property. JY stated they only followed instruction to serve the Notice on behalf of the landlord and the buyer. JY stated they should not be listed as a respondent. The tenant does not dispute this.

In this case, the tenant has listed the landlord's property management company as a respondent. The property management company has no obligation under the Act to meet the landlord's or the purchaser's obligation for the reasons stated in the Notice. Therefore, I find it appropriate to remove the property management company named in the style of cause from this proceeding, pursuant to section 64(3)(c) of the Act.

Issue to be Decided

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

Background and Evidence

The tenancy began in October 2004. Current rent in the amount of \$949.00 was payable on the first of each month. The tenancy ended on April 30, 2021.

The tenant stated that they received a Four Month Notice to End Tenancy for Demolishing, Renovations or Repair or Conversion of the Rental Unit (the "Notice"), issued on December 25, 2020, with an effective date of April 30, 2021.

Filed in evidence is a copy of the Notice and the reason stated in the Notice was the rental unit will be demolished.

The tenant testified that they accepted the Notice and vacated the rental unit on April 30, 2021. The tenant testified that they did not list the landlord named in the Notice as a respondent because it was the buyer of the property who asked in writing to end the tenancy so they could demolish the property when they took ownership.

Filed in evidence is a copy of the Contract of Purchaser and Sale (the "Contract") which shows the purchaser in writing requesting the landlord to give the Notice.

The tenant testified that the buyer did not have the property demolished and listed it for sale on May 14, 2021.

Filed in evidence is a photograph showing the property was listed for sale and emails from the city saying no permit for demolishing the property have be requested or issued.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

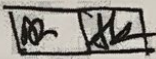
In this case, the Contract addendum reads as follows:

WHEREAS:

A. The undersigned (the "Buyer(s)") and the Seller(s) have entered into the Contract of Purchase and Sale dated Dec 17, 20 in respect of the purchase and sale of the above-noted Property (the "Purchase Agreement").

B. All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied or waived in accordance with the Purchase Agreement.

C. The Property is currently rented to tenant(s).

D. The Buyer(s) ~~for one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined in the Residential Tenancy Act), voting shareholders of the Buyer(s)) intend in good faith to occupy the Property.~~ DEMOLISHING THE HOUSE. 

NOW THEREFORE in accordance with Section 49 of the *Residential Tenancy Act*, the Buyer(s) hereby request that the Seller(s), as landlord, give notice (the "Tenant Notice") to the tenant(s) of the Property pursuant to the *Residential Tenancy Act* terminating the tenancy and requiring the tenant(s) to vacate the Property by 1:00 pm on May 8th, 2021.

[Reproduces as written]

The purchaser has altered the real estate document by crossing off the reason listed in part D. and has stated the reason to give the Notice is for Demolishing the House, pursuant to section 49 of the Act. The buyer was not entitled to change the reason stated in part D, as the only reason a purchaser can ask for vacant possession is that they **in good faith intend to occupy the premises**, pursuant to section 49(5) of the Act. Therefore, I find this is a clear attempt of the buyer to avoid the Act, by not taking possession of the premises pursuant to section 49(5) of the Act and to end the tenancy pursuant to section 49(6) of the Act.

The landlord issued the Notice based solely on the instructions of the purchaser. While this is problematic as they listed their own name in the Notice and normally the landlord listed in the Notice has to meet those obligations under the Act. There is no place on the form to list the purchaser, because this modification of the Notice is contrary to the Act. In addition, I find it is clear that this Notice was only issued at the written request of and on behalf of the purchaser as the seller had no intention of demolishing the rental premises.

I find it would be unreasonable to hold the seller responsible for the actions of the purchaser, as the landlord would not have ended the tenancy were it not for the written request of the purchaser and that the seller has no financial gain or benefit from issuing the Notice.

I find it is reasonable to hold the purchaser responsible for their actions for contracting outside of the Act, which is prohibited under section 5 of the Act. In fact, section 5(2) of the Act also states that any attempt to avoid or contract out of the Act **is of no effect**. The purchaser stated they would be demolishing the premises. I find the purchaser did not demolish the rental unit and find that no permits were issued. The property was listed for sale 14 days after the tenant vacated the rental unit. This leads me to believe that the purchaser wanted the property vacant, so it would be sold untenanted for their own benefit and for financial gain.

The purchaser had the opportunity to appear at hearing to provide testimony, as they signed for the tenant's application for dispute resolution and notice of hearing and fully knew the claim against them. I find it reasonable to conclude that the purchaser was accepting the facts presented in the details of dispute.

I find the purchaser attempted to avoid their obligation under the Act by requesting vacant possession for a reason they were not entitled to use, and then failing to do what they indicated on the modified Contract, which was to demolish the rental unit. Instead, the property was sold.

Based on the above, I find the purchaser must pay the tenant the equivalent of 12 times the monthly rent (\$949.00) in the total amount of \$11,388.00, pursuant to section 51(2) of the Act.

I find the tenant has established a total monetary claim of **\$11,488.00** comprised of the above amount and to recover the filing fee of \$100.00. I grant the tenant a monetary order pursuant to section 67 of the Act in that amount. The monetary order must be served on the purchaser and then can be filed in the Provincial Court and enforce as an order of the court. The **respondent is cautioned** that costs of such enforcement are recoverable from the respondent.

Conclusion

The tenant's application for compensation that is equal to 12 times the monthly rent is granted.

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: December 01, 2021

Residential Tenancy Branch