



Dispute Resolution Services

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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. The participatory hearing was held on December 3, 2021. The Tenant 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.

The Tenant was present at the hearing along with an occupant of the rental unit. A.D. was present and was one of the parties named as the "Landlord" on this application (however, he will be referred to as the "Purchaser", not the Landlord). J.Y. was also present on behalf of his property management company (herein referred to as the "Landlord's Property Management Company") which was named as the other "Landlord" on this application. This property management company acted as the general property manager for the numbered company which owned the rental unit at the material time (the numbered company which owned the property at the time the Notice was issued will be referred to as the "Landlord").

The Purchaser and the agent for the Landlord's Property Management Company confirmed they received the Notice of Hearing and evidence package from the Tenant. The Tenant confirmed he received an evidence package from the Landlord's Property Management Company. No issues were raised with respect to service of the documents and evidence.

All parties confirmed they understood Rule 6.11.

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 – Named Applicants

As shown in the tenancy agreement provided into evidence, only one Tenant, M.A., is listed on the signed tenancy agreement. Although the other individuals named as Tenants on this application were living in the rental unit, I find they were occupants, not Tenants. Occupants are not entitled to bring forward this type of application against the Landlord, and should not be named as Tenants on this application. As such, I amend the application accordingly, pursuant to section 64(3), and only M.A. will be listed as the Tenant on this application, as this is what the tenancy agreement provides for.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

All parties agree that monthly rent was \$2,500.00 per month. The Tenant stated he received the 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a rental unit (the Notice) on December 25, 2020, and moved out on May 2, 2021. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- Demolish the rental unit

On the Notice, the “Landlord” was listed as a numbered company. This numbered company was the same company who owned the property at the time the Notice was issued, employed the property management company named on this application, and who eventually completed the sale of the property sometime in May 2021, after issuing the Notice a few months prior.

In the hearing, the agent for the Landlord’s Property Management Company verbally confirmed that the rental unit was owned by the numbered company listed as the

Landlord on the Notice, before it sold to the Purchaser in 2021. The agent for the Landlord's Property Management Company clarified that the Landlord's listed address on the Notice was in fact the corporate mailing address for the property management company he works for, as named on the style of cause.

The Tenant stated that he is looking for 12 month's compensation, pursuant to section 51(2) of the Act because he was issued the Notice so that the rental unit could be demolished. However, the house was sold, and is still not demolished as of the time of this hearing. The Tenant stated that he was served the Notice by an agent for the Landlord's Property Management Company, and he accepted the Notice, moved out, and chose not to dispute the Notice.

The Purchaser explained that he should have nothing to do with this claim because he did not ask for any specific type of Notice to End Tenancy to be issued, rather, he asked for vacant possession of the rental unit so that he could demolish the building. The Purchaser stated that he made an offer, which was accepted, to buy the subject property on or around December 17, 2020, and he took possession of the entire rental property on May 8, 2021, which was a few days after the tenancy ended on May 2, 2021.

The Purchaser stated that he applied for demolition permits, and the abatement permit in May sometime, and he was not granted the abatement permit until October 18, 2021. The Purchaser stated that shortly after taking ownership of the property in May 2021, he decided he did not want to keep the property and proceed with demolition and he decided to re-list the unit for sale on June 21, 2021. The Purchaser stated that he subsequently sold the property and ceased being the owner on or around October 30, 2021. The Purchaser stated that the house is still standing, but he believes demolition will be happening soon under different ownership.

The agent for the Landlord's Property Management Company opined that his company should not be responsible for paying compensation because his company only served the Notice because the Landlord asked them to. The agent for the Landlord's Property Management Company stated that their company was employed to manage the rental building, the tenancy agreement, and related responsibilities, but they were not the acting as a real estate agent for the sale of the house.

A copy of the Tenancy Agreement was provided into evidence, which shows that an agent for the Landlord's Property Management Company was directly involved in drafting and delivering the Tenancy Agreement with this Tenant, sometime in May 2019.

An agent for the Landlord's Property Management Company signed the tenancy agreement "care of" the Landlord. The Landlord's Property Management Company also drafted the tenancy agreement on their corporate letterhead.

Analysis

First, I note that neither parties named as the Landlord on this application believe they are liable for the compensation sought by the Tenant. I have considered the totality of the testimony and evidence on this matter, and I note the following relevant portion of the Act:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

I find the actions and duties of the agents representing the Landlord's Property Management Company are such that their corporation, as named on this application, should be considered a "Landlord" for the purposes of this proceeding. The Landlord was the owner of the rental unit at the time the Notice was issued, and had delegated the authority to manage the tenancy and the rental unit to the Property Management Company named on this application. An agent for the Landlord's Property Management Company exercised these powers in relation to the rental unit on behalf of the Property Management Company. I find the Landlord's Property Management Company was an agent for the owner, who meets the criteria noted above under (a)(i) and (ii) above.

I find the Landlord's Property Management Company, as named on this application, is a Landlord for the purposes of this proceeding, and will remain as a named party.

With respect to the Purchaser (the other party named as the Landlord), I find he is not a Landlord for the purposes of this application. In making this determination, I note that the Notice was issued on or around December 25, 2020. The Purchaser had an accepted offer in place on the subject property at the time the Notice was issued by the Landlord and the Landlord's Property Management Company. However, he was not the owner of the rental unit until May 7, 2021, when the sale completed. Further, there is no evidence he was acting as an agent for the Landlord when the Notice was originally issued. I do not find the Purchaser meets the definition of a Landlord under the Act, as

by the time he was in a position to permit occupation or exercise rights under the Act, the tenancy had already vacated the rental unit. Further, there is no provision under section 51 of the Act to award 12 month's compensation against the Purchaser since there is no provision under the Act for the Purchaser to request a 4-Month Notice be issued, prior to becoming an owner.

Additionally, I note the Landlord's Property Management Company issued the Notice on behalf of the Landlord because the Purchaser asked for vacant possession in order to demolish the rental unit. However, as stated above, there is no provision or section of the Act which allows a purchaser to request vacant possession via a notice to end tenancy so that the unit can be demolished. A purchaser may only request vacant possession under the Act, prior to becoming an owner, via a 2-Month Notice to End Tenancy for Landlord's Use if a family member is going to move in and if all sale conditions have been satisfied, pursuant to section 49(5) of the Act. I find the Purchaser was not a landlord at the time the Notice was issued, nor was he entitled to lawfully request vacant possession for demolition, prior to being an owner. Further, the Landlord and the Landlord's Property Management Company ought to have known the legal implications of issuing the Notice not in accordance with the Act while they were still the Landlords, prior to the completion of the sale, and before the Purchaser took ownership.

Next, I turn to the Tenant's request to obtain 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 RENVOATIONS 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 or that they have an extenuating circumstance. The Landlord selected that they are ending the tenancy in order to demolish the rental unit, pursuant to section 49(6)(a) of the Act.

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

51 (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.*

There is no evidence that the house was demolished, within a reasonable period of time after the effective date of the Notice. In fact, it has been over 6 months, and the house is still not demolished. Although some permits were obtained to start demolition, the house was sold, after the Notice was issued, which I find is a violation of section 51(2) of the Act. The Landlord, as named on the Notice to End Tenancy, is the person required to follow through with the reason listed on the Notice.

This typically entitles the Tenant to compensation. However, the issue now becomes whether or not there is sufficient evidence that there were extenuating circumstances such that the Landlord 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*

When viewing the totality of the situation, I find there is insufficient evidence that there were extenuating circumstances that substantially contributed to the Landlord's inability to accomplish the stated purpose and that it would be unreasonable or unjust for compensation to be paid. All parties involved in completing and serving the Notice ought to have understood the requirements and implications of issuing this type of Notice, prior to doing so.

I award the Tenant \$30,000.00, pursuant to section 51(2) of the Act, which is 12 times monthly rent of \$2,500.00. I order the Landlord's Property Management Company to pay the Tenant the full amount sought.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the respondent to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

Conclusion

I grant the Tenant a monetary order in the amount of \$30,100.00. This order must be served on the Landlord's Property Management Company. If the Landlord's Property Management Company fails to comply with this order the Tenant 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: December 8, 2021

Residential Tenancy Branch