



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 monetary compensation that is equal to the equivalent of 12 times the monthly rent pursuant to section 49 and 51 of the Act, and to recover the filing fee.

The tenant attended the hearing. As the respondent did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on July 15, 2021, a Canada post tracking number was provided as evidence of service. The tenant stated that the registered mail was returned unclaimed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the respondent has been duly served in accordance with the Act. Refusal or neglect to pickup the registered mail is not grounds for review. Section 5 of the Act states any attempt to avoid the Act has no effect.

Issue to be Decided

Is the tenant entitled to compensation pursuant to section 49 of 51 of the Act?

Background and Evidence

The tenancy began on May 1, 2013. Rent in the amount of \$850.00 was payable on the first of each month. The tenancy ended on May 31, 2021.

The tenant testified that their landlord had sold the rental property and they were served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") issued on March 31, 2021, as the purchaser had requested in writing that this Notice be given because the purchaser or a close family member intends in good faith to occupy the premises. Filed in evidence is a copy of the Notice, and a copy of Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession.

The tenant testified that they vacated the premises in accordance with the Notice on May 31, 2021. The tenant stated that they were informed by the landlord that the buyer did not complete sale of the property, as a result the purchaser did not fulfill their obligation in the Notice and under section 49 of the Act. The tenant stated that they would not have moved if it was not for the purchaser.

Filed in evidence is an email dated June 21, 2021 from the landlord to the tenant, which reads in part,

"I was requested by the realtor (as was requested by the buyer) to give written notice to end tenancy. Which I did on March 31, 2021. I was required to give my tenant ... 2 months notice to vacate the property.

When it came time to close, she breached the contract of sale and did not offer any information whey she did not close on the purchase of ..."

[Reproduced as written.]

The tenant submits they should be entitled to 12 times the monthly rent of \$850.00 for a total amount of \$10,200.00.

Analysis

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

Tenant's compensation: section 49 notice

51 (2) of the Act states,

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.

In this case, the purchaser asked the landlord in writing to issue the Notice. The purchaser failed to complete the contract for the sale of the property and as a result the purchaser breached the Act, as they did not use the property for the stated purpose. I find the purchaser breached the Act and must pay the tenant the equivalent of 12 times the monthly rent in the amount of **\$10,200.00**.

I have not considered section 51(3) of the Act because the purchaser did not attend the hearing to provide any evidence that extenuating circumstances prevented them from fulfilling their obligation under the Act.

I find the tenant has established a total monetary claim of \$10,300.00 comprised of the above amount and the \$100.00 the tenant paid to file their application. This Order may be filed in Provincial Court (Small Claims) and enforced as an order of the court. The **purchaser is cautioned** that costs of such enforcement are recoverable from the purchaser.

Conclusion

The tenant is granted a monetary order against the purchaser.

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: January 13, 2022

Residential Tenancy Branch