



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 24, 2021 (the “Application”). The Tenants applied for compensation from the Purchaser S.H. related to a Notice to End Tenancy for Landlord's Use of Property and reimbursement for the filing fee.

The Tenant appeared at the hearing and appeared for Tenant L.B. Nobody appeared at the hearing for Purchaser S.H. I explained the hearing process to the Tenant who did not have questions when asked. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. Purchaser S.H. did not submit evidence. I addressed service of the hearing package and Tenants’ evidence.

The Tenant testified that they sent the hearing package and their evidence to Purchaser S.H. at their residence by registered mail on August 12, 2021. The Tenants submitted a receipt with Tracking Number 897 on it and the Tenant confirmed this package contained the hearing package and some evidence. I looked Tracking Number 897 up on the Canada Post website which shows the package was delivered to Purchaser S.H. August 18, 2021.

The Tenant testified that the remainder of their evidence was put in the mailbox at Purchaser S.H.’s residence on December 30, 2021. The Tenants submitted a video in support of this.

Based on the undisputed testimony of the Tenant, receipt and Canada Post website information, I find Purchaser S.H. was served with the hearing package and Tenants' evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*"). Based on the Canada Post website information, I find Purchaser S.H. received the package August 18, 2021. I also find the Tenants complied with rule 3.1 of the Rules in relation to the timing of service.

Based on the undisputed testimony of the Tenant and video, I find Purchaser S.H. was served with further evidence December 30, 2021 in accordance with section 88(f) of the *Act*. Pursuant to section 90(d) of the *Act*, Purchaser S.H. is deemed to have received the further evidence January 02, 2022. I find the Tenants complied with rule 3.14 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of Purchaser S.H. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Tenant. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation from Purchaser S.H. related to a Notice to End Tenancy for Landlord's Use of Property?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought \$13,200.00 in compensation pursuant to section 51 of the *Act* based on Purchaser S.H. failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 23, 2021 (the "*Notice*").

A written tenancy agreement was submitted. The agreement is between the Tenants and landlords X.L. and W.W. The tenancy started November 01, 2017 and was for a fixed term ending October 31, 2018. The tenancy then became a month-to-month tenancy. Rent was \$1,100.00 per month due on the first day of each month. The Tenants paid a \$550.00 security deposit. The agreement was signed by all parties.

The Notice was submitted. The Notice had an effective date of May 31, 2021. The Notice was issued by landlord X.L. The grounds for the Notice are as follows:

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 Notice names the purchaser as Purchaser S.H.

The Tenant confirmed the Tenants were served with the Notice.

The Tenant confirmed Purchaser S.H. purchased the rental unit and took possession around June 20, 2021.

The basis for the Tenants' request for compensation is as follows. The rental unit was in a house with an upper suite and basement suite. There was only one basement suite in the house. Purchaser S.H. purchased the property. The Tenants were issued the Notice. The Tenants moved out of the rental unit May 15, 2021. After the Tenants moved out, Purchaser S.H. gutted the basement suite and put a wall up making it into two basement suites. The property was then listed for sale and listed as having two one-bedroom basement suites. Purchaser S.H. never moved into the property. The Tenant witnessed construction occurring at the property.

The Tenants submitted the following relevant evidence:

- A screenshot showing the property was listed for sale. The Tenants state that the listing is from July 23, 2021.
- Website information showing the property was listed for sale February 16, 2021, sold June 04, 2021, listed for sale July 20, 2021 and sold October 28, 2021.
- Page one of a Contract of Purchase and Sale between landlord X.L. and Purchaser S.H.
- A screenshot of a sales listing for the property which states it has two one-bedroom suites for mortgage helpers and rental income.
- A video of a For Sale sign on the property.

Analysis

The Notice was issued pursuant to section 49(5) of the *Act* which states:

- (5) A landlord may end a tenancy in respect of a rental unit if
- (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the **purchaser** is an individual and the purchaser, **or a close family member** of the purchaser, **intends in good faith to occupy the rental unit**...(emphasis added)

Section 51(2) and (3) of the *Act* state:

- (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 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.

(emphasis added)

Pursuant to section 51(2) of the *Act*, the Tenants can claim for compensation from Purchaser S.H. as the purchaser of the property who asked landlord X.L. to issue the Notice.

When tenants apply for compensation pursuant to section 51(2) of the *Act*, it is the landlord or purchaser who has the onus to prove they followed through with the stated purpose of the notice to end tenancy within a reasonable period after the effective date of the notice and used the rental unit for the stated purpose for at least six months.

Pursuant to sections 49(5) and 51(2) of the *Act*, Purchaser S.H. has the onus to prove they, or a close family member, occupied the rental unit within a reasonable period after May 31, 2021 and continued to occupy the rental unit for at least six months.

As stated in RTB Policy Guideline 2A at page 2, “occupy” means to use as living accommodation.

Given Purchaser S.H. did not submit evidence or appear at the hearing, they have failed to prove they, or a close family member, occupied the rental unit within a reasonable period after May 31, 2021 and continued to occupy the rental unit for at least six months.

Further, I accept the undisputed testimony of the Tenant and based on it, as well as the documentary evidence outlined above, I accept that Purchaser S.H. never moved into the property or rental unit, renovated the rental unit and listed the property for sale July 20, 2021. I also accept based on the documentary evidence outlined above that Purchaser S.H. sold the property October 28, 2021, within five months of the effective date of the Notice. Given the undisputed testimony of the Tenant and documentary evidence outlined above, I accept that Purchaser S.H., or a close family member, did

not occupy the rental unit within a reasonable period after May 31, 2021 and did not continue to occupy the rental unit for at least six months.

Given Purchaser S.H. did not submit evidence and did not appear at the hearing, there is no evidence before me that exceptional circumstances prevented Purchaser S.H., or a close family member, from occupying the rental unit within a reasonable period after May 31, 2021 and continuing to occupy the rental unit for at least six months.

Therefore, I am not satisfied section 51(3) of the *Act* applies.

Given the above, I am satisfied section 51(2) of the *Act* applies and Purchaser S.H. must pay the Tenants 12 times the monthly rent payable under the tenancy agreement being \$13,200.00 (\$1,100.00 x 12).

Given the Tenants were successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$13,300.00 and are issued a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenants are entitled to \$13,300.00 and are issued a Monetary Order in this amount. This Order must be served on Purchaser S.H. and, if Purchaser S.H. does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 10, 2022

Residential Tenancy Branch