



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 as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation of \$19,800.00 from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 24, 2021 ("Two Month Notice"); and to recover the \$100.00 cost of his Application filing fee.

In attendance at the hearing were:

- ▶ the Tenant,
- ▶ the Tenant's agent, N.M. ("T-Agent"),
- ▶ the purchasers, R.B. and N.B. ("Purchasers"),
- ▶ the Landlords, H.N. and S.N., and
- ▶ an agent for the Landlord, A.N. ("L-Agent").

These people appeared at the teleconference hearing and provided, or were available to provide affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

In terms of service of the Tenant's Notice of Hearing, Application, and the evidence before me, the Purchasers and the Landlords acknowledged that the Tenant served them with all of his relevant documents, notices, and evidence. However, the L-Agent said that the Parties on the Landlord's side did not serve the Tenant with any evidence that they had submitted to the RTB. As this is inconsistent with the Rules and with administrative fairness embodied in the Rules, I advised the Parties that I would not consider the evidence from the Landlords'/Purchasers' side of the proceeding.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2009, with a monthly rent of \$1,350.00, due on the first day of each month. They agreed that at the end of the tenancy, the Tenant was required to pay the Landlord \$1,650.00 in rent per month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$665.00, and no pet damage deposit. They also agreed that the Landlord had returned the security deposit to the Tenant at the end of the tenancy.

The Two Month Notice was signed and dated February 24, 2021 by the Purchasers, it has the rental unit address, it was served via email on February 24, 2021, with an effective vacancy date of April 30, 2021. The Two Month Notice was served on the grounds that 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 asked the Tenant why I should award him the compensation he seeks in his Application, and the T-Agent said the following:

What he hopes to be is reimbursed; they had to uproot their family. They were told that the new landlords were moving in, but within 30 days they had it for rent and it was rented out. He would like the money – he had to take out loans, he's in debt, he had to move into a smaller house. He almost lost his relationship over it.

And having been in the home for so long, he now pays \$2,700.00 to rent a dump.

The Purchasers said:

Because during the whole time, we didn't know about any renters. It is the owner who has the property. We never saw the property because of Covid. We were surprised to get the notice. We were never advised by anyone that the house has renters. We thought it was the owner. We were looking for a property; we bought the property in a rush. We never went over there and we never enquired. And we rushed to buy the property. We would have thought about this if we had known.

I asked the Landlord why they evicted the Tenants, and they said:

Our advice from their real estate agent. My parent's agent is [J.S.]. The local real estate agent told us to use this form to evict the Tenants. He didn't explain what the form was or anything about it or even how to fill it out. With their limited professional English my parents relied on him.

I asked the Purchasers how they are using the residential property now, and they said:

It is for rent. We were trying to move in, but in four or five years, so we rented it out for the time being. We didn't think about that. We were not thinking about moving in at that point. We want to tear it down and build a home there. But we would wait, because we spent a lot of money.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

As explained in Policy Guideline 50 ("PG #50"):

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family

member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy. .

[emphasis added]

PG #50 goes on to say:

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

. . .

The evidence before me is that the Purchasers re-rented the residential property to new tenants, after having signed the Two Month Notice evicting the existing Tenants. The Purchasers' excuse was that they did not know there were people renting the residential property already.

Pursuant to section 51 (2) (b) of the Act, I find that the Tenant is entitled to compensation of 12 times the monthly rent payable under the tenancy agreement. This is because the rental unit was not used for the stated purpose for at least six months' duration, beginning within a reasonable period after the effective date of the Two Month Notice.

I do not find that the Purchasers took steps to move into the rental unit, which was the stated purpose to end the tenancy. Furthermore, the rental unit was not used for the stated purpose for at least six months. In fact, the evidence was that the Purchaser did not use the rental unit for the stated purpose at all. They said they have re-rented it to new tenants, until they can afford to tear it down and build a new house for themselves. In this set of circumstances, I find that the Purchasers should have allowed the Tenant to continue renting the residential property until they wanted to tear it down.

The Purchasers said that they "were not advised that the house had renters". They also said: "We bought the property in a rush. We never went over there and we never enquired." However, the Purchasers names are printed on the Two Month Notice in the spot for "name of landlord/agent", and beside their names is a signature in a spot for "signature of landlord/agent" on the Two Month Notice. I find that a reasonable person would have enquired about the form they were signing. It is a prudent course of action to know what you are signing. I find that the circumstances described by the Purchasers do not amount to extenuating circumstances that could excuse them from not having

accomplished the purpose of the Two Month Notice at all, let alone in a reasonable amount of time.

Part E of PG #50, “Extenuating Circumstances” states that:

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner’s control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

In this case, I find that the effect of having signed the Two Month Notice is that the Purchasers are liable for the compensation tenants may be granted pursuant to section 51 (2) of the Act.

It has been over ten months since the effective vacancy date of the Two Month Notice. The Purchasers have had time to move into the rental unit and live there for at least six months’ duration. However, rather than pursue the purpose set out on the Two Month Notice, the Purchasers re-rented the residential property to new tenants.

I find that the Purchasers explanation of why they are in this situation, does not amount to an “extenuating circumstance” pursuant to the Act and Policy Guidelines.

Accordingly, I find that the Purchasers are liable to the Tenant for 12 times the monthly rent of \$1,650.00 a month for a total of \$19,800.00, pursuant to section 51 (2) of the Act.

I, therefore, award the Tenant twelve times the rent of \$1,650.00 or \$19,800.00. I also award the Tenant with recovery of his \$100.00 Application filing fee pursuant to section 72 of the Act. Accordingly, I grant the Tenant with a Monetary Order of **\$19,900.00** from the Purchasers, pursuant to sections 51 (2) and 67 of the Act.

Conclusion

The Tenant's claim for recovery of 12 times the monthly rent is successful in the amount of **\$19,800.00**. The Purchaser did not provide sufficient evidence to establish their good faith intention for a close family member to occupy the rental unit – the stated purpose of the Two Month Notice. The Tenant is also awarded recovery of his **\$100.00** Application filing fee from the Purchasers.

I, therefore, grant the Tenant a Monetary Order under section 67 of the Act from the Purchasers in the amount of **\$19,900.00**.

This Order must be served on the Purchasers by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 10, 2022

Residential Tenancy Branch