



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 the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The respondent was assisted by an associate.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the respondent?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. There was a tenancy between the tenants and the previous owner of the rental property which began in 2008. The monthly rent at the end of the tenancy was \$1,325.00 payable on the first of each month.

The tenants were issued a 2 Month Notice to End Tenancy dated March 20, 2021 with an effective date of June 15, 2021. The reason provided on the notice for the tenancy to end is that:

All of the conditions for 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 provides the Respondent as the purchaser of the property and a copy of the Buyers Notice to Seller for Vacant Possession signed by the Respondents was also submitted with the 2 Month Notice.

The Respondent confirms that they gave written request to the former landlord to issue the 2 Month Notice to take vacant possession of the rental property. After taking possession of the rental property, the Respondent subsequently listed the property and sold it to third parties in September 2021. The parties agree that as of the date of the hearing, neither the Respondent nor any close family members have occupied the rental unit.

The Respondent submits that they purchased the rental property with the intention of having their adult daughter reside in the suite but she subsequently moved out of the province when their partner found employment elsewhere.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states that a landlord or, the purchaser who asked the landlord to give the notice must pay the tenant an amount that is equivalent to 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,

In the 2 Month Notice the previous landlord indicated that the purchasers of the property have requested in writing to issue the notice as the purchaser, or a close family member, intends to occupy the rental unit.

The parties gave undisputed evidence that the named Respondent is the purchaser of the property, that they gave written request to the seller to issue the 2 Month Notice and that neither they nor any family members ever occupied the rental unit as stated on the notice. The rental property was placed on the market and sold in September, 2021, a few months after the Respondent took possession.

The Respondent made some submissions regarding the condition of the suite being unsuitable for habitation and also that their adult daughter who was to occupy the rental unit has moved out of the province. I do not find the circumstances cited by the Respondent to be appropriately characterized as extenuating so that it excuses the Respondent from paying the tenants the amount required pursuant to section 51(3) of the *Act*.

Residential Tenancy Policy Guideline 50 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing one's mind or failing to adequately budget to be examples of circumstances that may not be extenuating.

I do not find the submissions of the Respondent to be an example of extenuating circumstances. Not only has the Respondent failed to provide documentary evidence in support of their claim that their daughter, who was the intended occupant of the rental unit has moved out of the province, the evidence is simply that plans were altered when employment circumstances of their partner changed. The Respondent's family member actively made a choice to relocate just as the Respondent themselves chose to place the property on the market and not use it for the stated intentions on the 2 Month Notice.

I find, based on the undisputed evidence of the parties, that the purchaser did not use the rental unit for the purposes stated on the 2 Month Notice. I find that the circumstances that prevented the purchaser from using the rental unit for its stated purpose is not extenuating and therefore does not excuse the purchasers from their liability under the *Act*.

Consequently, in accordance with section 51(2) of the *Act*, I find that the tenants are entitled to a monetary award of \$15,900.00, the equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the tenants were successful in their application, they are also entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$16,000.00. The Respondent must be served with this Order as soon as possible. Should the Respondent fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: April 21, 2022

Residential Tenancy Branch