



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 September 08, 2021 (the “Application”). The Tenants applied as follows:

- For compensation from the Purchaser related to a Two Month Notice to End Tenancy for Landlord’s Use of Property dated April 13, 2021 (the “Notice”)
- To recover the filing fee

The Tenants appeared at the hearing. The Purchaser appeared at the hearing with M.M. to assist. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. M.M. confirmed receipt of the hearing package and Tenants’ evidence, other than a video submitted. M.M. did not raise any issue with service, except in relation to the video. The Tenants advised that they did not provide the video to the Purchaser and therefore I excluded it pursuant to rule 3.17 of the Rules. The Tenants confirmed receipt of the Purchaser’s evidence and did not raise any issue with service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence submitted and all oral testimony and submissions of the parties. 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 the Purchaser in relation to the Notice?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the Purchaser took possession of the rental unit pursuant to a Contract of Purchase and Sale June 28, 2021. The parties agreed the Tenants moved out of the rental unit June 01, 2021. The parties agreed there was a tenancy agreement between the prior owner of the rental unit and the Tenants.

The Tenants testified that their tenancy with the prior owner of the rental unit started April 08, 2019, and that rent was \$1,250.00 per month due on the 15th day of each month. Neither M.M. nor the Purchaser knew about the details of the tenancy agreement between the Tenants and prior owner.

The Tenants sought \$15,000.00 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the “Act”) based on the Purchaser failing to follow through with the stated purpose of the Notice.

The Notice states the following ground:

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 effective date of the Notice is June 14, 2021. The Purchaser is named as the purchaser on the Notice.

The Tenants testified that the Notice was served on them April 13, 2021, and M.M. did not dispute this.

M.M. and the Purchaser testified that the rental unit was in the lower suite of a house with two suites. M.M. and the Purchaser testified that the upstairs suite has three bedrooms, and the lower suite has two bedrooms. The Purchaser testified that they are

a family of six with four children, the oldest of which is M.P. who was 18 years old at the relevant time.

M.M. provided the following testimony and submissions. The Purchaser's family was living in S. before purchasing the house and rental unit. The Purchaser's family was growing, and they needed more room. The family moved into the house together June 28, 2021. M.P. moved into the rental unit which was the lower suite of the house. There is a photo in evidence from June 28, 2021, showing the family, including M.P., moving to the house in M.R. The photo was taken in front of the family's house in S. M.P. was working at the time and on June 30, 2021, had been accepted into college. M.P. was working in S. but transferred to M.R. when the family moved. In July of 2021, M.P. started having mental health challenges. The evidence from M.P.'s employer supports that M.P. was having trouble at work. M.P. was involuntarily admitted to a psychiatric hospital August 13, 2021. M.P. was diagnosed with schizophrenia and continues to suffer from this today. M.P. lived in the lower suite from June 28, 2021, to August 13, 2021. M.P. was hospitalized from August 13, 2021, to September 04, 2021.

The Purchaser testified that, after September 04, 2021, M.P. lived with them for part of September and then left the country.

M.M. provided the following further testimony and submissions. The Purchaser submits that extenuating circumstances prevented them from using the rental unit for the stated purpose on the Notice for at least six months. M.P. was living in the rental unit and it was only after the Purchaser found out about M.P. having mental health challenges that they engaged M.M. to rent out the lower suite. The Purchaser did not decide to re-rent the lower suite until they understood that M.P. was not doing well and was in a dire state. M.P. was helping the family financially and effectively lost their job July 15, 2021, as shown in the email from their employer. The family needed financial assistance given M.P. was no longer contributing financially to the family and so decided to re-rent the lower suite July 22, 2021.

M.M. relied on a doctor's note in evidence to show M.P. was working at the time the note was written, which was August 25, 2021. M.M. and the Purchaser took the position that M.P. was on the verge of losing their job in July and in August sought the doctor's note to ensure M.P. did not completely lose their job.

The Purchaser relied on the photo of their family on moving day to show M.P. moved into the rental unit. The Purchaser did not provide documentary evidence of M.P. transferring work locations from S. to M.R. The Purchaser did not provide documentary evidence showing M.P. did not work between July and August of 2021. The Purchaser did not provide documentary evidence showing M.P. did contribute financially to the family at any point.

Although unclear at first, the Tenants did dispute that M.P. moved into the rental unit as claimed. The Tenants testified as follows. The Purchaser's father came to look at the rental unit and they were told this was who would live in the rental unit. The lower suite was posted for rent on August 15, 2021, and their friend attended to look at the lower suite. The Tenants' friend said the lower suite was empty.

In reply, the Purchaser denied that their father looked at the rental unit. M.M. raised an issue about the rent amount at the end of the tenancy as claimed by the Tenants. Neither the Purchaser nor M.M. knew what the rent amount was; however, M.M. took issue with the lack of proof from the Tenants on this point.

The parties provided documentary evidence which I will refer to below as necessary.

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...

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(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.

Pursuant to section 51(2) of the *Act*, the Purchaser has the onus to prove they or a close family member occupied the rental unit within a reasonable period after June 14, 2021, the effective date of the Notice. Pursuant to rule 6.6 of the Rules, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The parties take conflicting positions on whether M.P. moved into the rental unit after the Tenants moved out. Given the conflicting positions, I have considered what further evidence there is before me to prove M.P. moved into the rental unit June 28, 2021, as claimed. The only further evidence relied on by the Purchaser is a photo of their family on June 28, 2021, in front of their previous house in S. A photo of the Purchaser's family in front of their previous house does not prove that M.P. lived with their family at the time, lived in the previous house in S. or moved into the rental unit. I simply cannot reasonably draw these conclusions from the photo. In the absence of further evidence, I am not satisfied M.P. did move into the rental unit and therefore find the Purchaser has failed to prove they or a close family member occupied the rental unit within a reasonable period after June 14, 2021. Given the Purchaser has failed to prove M.P. moved into the rental unit, the circumstances relating to M.P.'s work, health and hospitalization are not relevant to this matter.

Given the lack of compelling evidence to prove M.P. moved into the rental unit June 28, 2021, I find the Purchaser has failed to establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the Notice. Given this, the Purchaser must pay the Tenants the equivalent of 12 times the monthly rent.

I accept the testimony of the Tenants that their rent at the end of the tenancy was \$1,250.00 per month. I find the Tenants are in the best position to know what they were paying in rent at the end of the tenancy. Neither M.M. nor the Purchaser knew what the Tenants were paying in rent at the end of the tenancy and therefore this is not a situation where I must decide between two inconsistent statements of fact. Further, I had no concerns about the reliability or credibility of the Tenants and accept their testimony about the rent amount. In the circumstances, I award the Tenants \$15,000.00 pursuant to section 51(2) of the *Act*.

As 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 \$15,100.00 and I issue the Tenants a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenants are entitled to \$15,100.00 and I issue the Tenants a Monetary Order in this amount. This Order must be served on the Purchaser and, if the Purchaser 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: May 19, 2022

Residential Tenancy Branch