



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on May 27, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

The Landlords, K.M. and N.M. attended the hearing with their legal counsel (collectively referred to as the Landlord). The Tenant also attended the hearing. All parties provided affirmed testimony. Both parties confirmed receipt of each other's evidence, and no issues were raised with respect to service of the documents.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

Both parties agree that monthly rent was \$1,250.00 per month. The Tenant stated he received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on or around April 28, 2021, and moved out on or around June 15, 2021. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- *The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*
 - *The Landlord or the Landlord's Spouse*
- *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.*

On the second page of the Notice, the purchasers listed were the respondents/Landlords named on this application. They asked, for vacant possession of the rental unit, in writing, after the conditions of the purchase and sale agreement had been satisfied. This written request was provided into evidence and is called "buyer's notice to seller".

The Tenant stated that the Notice clearly shows that the Landlord, or the Landlord's spouse, was required to move into the property, but instead it was one of the Landlord's (K.M.), brother who moved into the rental unit. The Tenant stated that only K.M. and N.M are listed as Purchasers on the Notice, not K.M.'s brother, M.M. The Tenant noted, via his investigative report, that the Landlords also own the house immediately adjacent to the rental house, as there are two houses on the same property, all of which were purchased in June of last year. However, the Landlords did not move into the subject rental unit, rather they moved into the other house on the property, which has a different address.

The Landlords, K.M. and N.M, provided written and verbal explanations and arguments speaking to the fact that they bought this property, which consists of two houses, on June 7, 2021. The Landlords, K.M. and N.M., stated that they contributed \$355,372.48 towards the purchase price of the home, and K.M.'s brother, M.M., contributed \$169,627.52 towards the purchase price. The Landlords provided a copy of the Ownership Agreement document, which lays out the details. K.M. and N.M are listed as

having a 2/3 interest in the property, and M.M. is listed as having a 1/3 interest. The Ownership Agreement specifies how expenses and rights are to be managed.

The Landlords stated that they bought this property because they wanted a property where they could live in separate units within close proximity to each other, and to K.M.'s brother, M.M. The Landlords stated that M.M. has a disability and has mental health issues. The Landlords also stated that they needed to keep M.M. off the legal title because he is on disability, and his lack of employment would have negatively impacted mortgage qualification. As such, M.M. was not on legal title, but he was always a beneficial owner, and purchaser.

The Landlords stated that they executed a Declaration of Bare Trust, Ownership Agreement, and Land Owner Transparency Report acknowledging that they hold a portion of the property, in trust, for M.M., and that M.M. is a beneficial owner of the subject property. These documents were not drafted and formalized until February 2022. The Landlords stated that these documents were not drafted sooner because they had until November 30, 2022, to file the documents (declaration of bare trust/ownership agreement) with the registrar of the Land Owner Transparency Registry.

The Landlords argued that the Tenant was properly served with the Notice, because M.M. is an owner of the property. The Landlords stated that although M.M. is not on legal title, he is a beneficial owner of the property, as demonstrated by the Declaration of Bare Trust, the Land Owner Transparency Reports, and the Ownership Agreement. The Landlords indicated that M.M. pays a portion of the remaining mortgage on the property, and other property related expenses. The Landlords stated that M.M. has benefit and use of the subject property as a beneficial owner. The Landlords also argued that under section 49(5) of the Act, the purchaser of the rental unit is entitled to end the tenancy, if the conditions of sale have been satisfied, and the purchaser intends to occupy the rental unit. The Landlords stated that since M.M. contributed towards the purchase price of the property, he is an owner and purchaser, and doesn't need to meet the definition of "close family member" under the Act in order to satisfy the requirements under section 51 of the Act.

The Landlords provided a copy of the Declaration of Bare Trust, which specifies that since June 7, 2021, they have been legal owners of the property, and they hold 2/3 beneficial ownership since that date. The document further states that since June 7, 2021, M.M. has held 1/3 beneficial interest in the property. This same arrangement has continued, since June 7, 2021, despite the fact the Ownership Agreement, Declaration of Bare Trust, and Land Owner Transparency Reports were not dated until around

February 24, 2022. The transparency report filed with the Land Owner Transparency Registry shows that M.M. is registered an interest holder of the subject property, and has been since June 7, 2021.

The Tenant stated that he is suspicious of the fact that the legal documents (ownership agreement, statement of bare trust etc) were not formalized until February 2022, which was 4 months after he served them with the Notice of Dispute Resolution Proceeding.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENVOATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlords to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. The Landlord selected the following ground:

- *The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*
 - *The Landlord or the Landlord's Spouse*
- *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 turn to the following portion of the Act:

Tenant's compensation: section 49 notice

51 (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

- (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.*

(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 the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I have considered the totality of evidence and testimony on this matter. I note the Landlords, K.M. and N.M., were the individuals who requested for this Notice to be issued by way of the buyer's notice to seller, and by way of the Notice. K.M. and N.M. were the Purchasers listed on the Notice. The Tenant is seeking 12 month's compensation, pursuant to section 51(2), because neither K.M. and N.M. moved into the rental property. Rather, K.M.'s brother, M.M. moved in; this is not in dispute. The issue I must address is whether or not M.M. is considered a purchaser for the purposes of section 49 and 51 of the Act.

I note the Landlords, K.M. and N.M., have provided several legal documents showing that they are legal owners of the subject property, and that they also hold a 2/3 beneficial interest in the property. The documents also show that M.M. holds a 1/3 beneficial ownership interest in the property, and has since June 2021 (the date the sale completed). Although M.M. was not listed as a purchaser on the Notice, and he is not a legal owner on title, I am satisfied that he holds a 1/3 beneficial ownership interest in the subject property, and has since June 2021, when the property was acquired. I note M.M. contributed significantly to the purchase of the subject property, and I find he is a purchaser as contemplated by the Act. I find K.M. and N.M.'s explanation as to why M.M. was not put on legal title is reasonable and compelling, and I am not satisfied that they crafted this legal arrangement only after they were served with the Notice of Dispute Resolution Proceeding. M.M.'s interest in the property is detailed in several of the Landlord's documents, and show M.M. always was a beneficial owner, and purchaser of the property.

I find that when M.M. moved into the property shortly after the property was acquired, that this fulfilled the legal obligations under section 49(5)(c)(1) and 51(2) of the Act, where the "purchaser" or close family member must move in.

I dismiss the Tenant's application, in full, without leave.

Conclusion

I dismiss the Tenant's application in full, without leave.

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: May 30, 2022

Residential Tenancy Branch