



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Applicants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 51 equivalent to 12 times the monthly rent payable under a former tenancy agreement; and
- Return of their filing fee pursuant to s. 72.

The present dispute arises out of the Respondent purchasers asking the Applicants former landlord to issue a Two-Month Notice to End Tenancy (signed on November 21, 2021 (the “Two-Month Notice”)) under s. 49 of the *Act*.

K.W. and C.K. appeared as the Applicants. The Respondents did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Respondents did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

K.W. advises that the Respondents were served with the Notice of Dispute Resolution and evidence by way of registered mail sent to the Respondents address for service as listed in the Two-Month Notice. The Applicants provide a copy of the registered mail

tracking numbers and a photograph of the envelopes to the named respondents. The addresses correspond with that which is listed as the address for service in the Two-Month Notice.

K.W. indicated that one of the registered mail packages was picked up by the Respondent, whereas the second was returned. I have reviewed the tracking information provided by the Applicants, which confirms these details and indicates the package for the Respondent S.B. was retrieved on April 12, 2022.

Policy Guideline #12 provides guidance with respect to the service provisions of the *Act* and stating the following with respect to the application of the deeming provisions under s. 90 of the *Act*:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Presently, the Applicants served their application materials on the Respondents at the stated address for service within the Two-Month Notice. I find that the Applicants served their application materials in accordance with s. 89 of the *Act* by way of registered mail to the Respondents address for service. Pursuant to s. 90 of the *Act*, I deem that the Respondent M.B. received the application materials on April 3, 2022. I need not apply the deeming provisions for the Respondent S.B. as the application package sent to her was received on April 14, 2022 as indicated in the tracking information provided by the Applicants.

Issue(s) to be Decided

- 1) Are the Applicants entitled to compensation under s. 51(2) of the *Act*?
- 2) Are the Applicants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Applicants confirmed the following details with respect to the former tenancy:

- They took occupancy of the rental unit on April 19, 2013.
- They gave vacant possession of the rental unit to the former landlord on January 31, 2022.
- Prior to vacating, rent was payable in the amount of \$1,420.00 on the first day of each month.
- Aspects with respect to the security deposit were sorted with the former landlord at the end of their tenancy.

The Applicants indicate they received the Two-Month Notice after it had been served on them by the former landlord. The Two-Month Notice was issued at the request of the purchasers and was issued on the basis that the purchasers or their close family member would be occupying the rental unit.

The Applicants did not dispute the Two-Month Notice and vacated the rental unit, turning over the keys to the former landlord on January 31, 2022.

The Applicants indicate that their new accommodations are near to the former rental unit. They have attended the property occasionally since vacating to retrieve mail and have observed that the rental unit remains vacant. A series of photographs of the rental unit were put into evidence by the Applicants, which K.W. says were taken on March 23, 2022. They show the rental unit to be empty.

K.W. testified to speaking with a neighbouring resident who said that no one has moved into the rental unit. K.W. further testified that she observed yesterday that the rental unit's carport had been enclosed.

I enquired whether the Applicants were aware if the sale for the property had fallen through. The Applicants indicate that to their knowledge the sale had closed to the Respondent purchasers. K.W. advises that she spoke with her former landlord who indicated the sale completed. An online search was conducted in which K.W. says it showed the purchase was completed on January 31, 2022, though she could not confirm the source of this information.

The Respondents did not attend nor did they provide evidence to the Residential Tenancy Branch as part of this application.

Analysis

The Applicants seek compensation equivalent to 12 times their former monthly rent and for return of their filing fee.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

I accept the undisputed evidence of the Applicants that they were the former tenants at the subject rental unit, that they received the Two-Month Notice, that the Two-Month Notice was issued at the request of the Respondent purchasers, and that they accepted the Two-Month Notice and vacated the rental unit on its effective date.

I have reviewed the Two-Month Notice. It complies with the formal requirements of a notice to end tenancy imposed by s. 52 of the *Act* and is a valid Two-Month Notice issued under s. 49(5) of the *Act*. It enclosed the purchasers written request, which the Applicants have put into evidence. The Two-Month Notice is clear that it was issued on the basis of the purchasers' request that either they or their close family member would occupy the rental unit.

The wording of s. 51 of the *Act* is clear: the onus of proving the aspects of s. 51 rest with the Respondent purchasers. Policy Guideline 50 provides guidance with respect to compensation claims advanced under s. 51 of the *Act* and confirms this point, stating the following with respect to the onus of proof:

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.

In these circumstances and in compliance with s. 51 of the *Act*, the onus rests with the Respondent purchasers.

The Respondent purchasers were not present to prove that the stated purpose within the Two-Month Notice was fulfilled. They bear the burden and by failing to attend they have failed to discharge that burden. I find that the Landlord's have failed to show that the rental unit was occupied by the Respondent purchasers or a close family member, that this was done within a reasonable time, or that it has been used for that purpose for at least 6 months. Accordingly, I grant the Applicants' claim under s. 51(2) of the *Act* and order that the Respondent purchasers pay 12 times the rent that was payable under the tenancy agreement, which in this case is \$17,040.00 (\$1,420.00 x 12).

I would further note that Applicants provide convincing evidence that the rental unit is still vacant some months after the tenancy ended. The photographs depict an empty rental unit and overflowing mailbox. I accept K.W.'s undisputed testimony that the photos were taken on March 23, 2022.

Section 51(2)(a) of the *Act* provides that the purpose stated in the notice issued under s. 49 must be accomplished within a reasonable period after the effective date of the notice. Policy Guideline 50 states the following with respect to what is considered a reasonable period:

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to

temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Having regard to Policy Guideline 50, the rental unit being vacant for two or more months would not be considered a reasonable period of time. No renovation work is apparent in the photographs. The Applicants advise and I accept that the sale closed on January 31, 2022. I provide this information because leaving the rental unit vacant from January 31, 2022 until, at least, March 23, 2022 indicates that the Respondents did not carry out the purpose stated in the Two-Month Notice within a reasonable period of time after its effective date.

Conclusion

The Respondent purchasers failed to discharge their evidentiary burden under s. 51(2) of the *Act* to show that the purpose stated in the Two-Month Notice was accomplished within a reasonable period of time after the notice's effective date and that the rental unit was used for that purpose for at least 6 months. Accordingly, I order pursuant to s. 51(2) of the *Act* that the Respondents pay \$17,040.00 (\$1,420.00 x 12) to the Applicants.

As the Applicants were successful in their application, I find they are entitled to the return of their filing fee. I order pursuant to s. 72(1) of the *Act* that the Respondents pay the Applicants \$100.00 filing fee.

Pursuant to s. 67, I order that the Respondents pay **\$17,140.00** to the Applicants, which represents the total of the orders made above (\$17,040.00 + \$100.00).

It is the Applicants responsibility to serve the monetary order on the Respondents. If the Respondents do not comply with the monetary order, it may be filed by the Applicants with 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: May 12, 2022

Residential Tenancy Branch