



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 tenants' 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 landlords 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 landlord was represented by family members (the "landlord").

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 landlord testified that they received the tenant's materials and had not filed any evidence of their own. Based on the testimonies I find the landlord 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 their filing fee from the landlord?

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.

This periodic tenancy began on November 1, 2016 between the tenants and the previous owner of the property (the “Seller”). Monthly rent was \$2,000.00 payable on the first of each month. The named respondent is the current owner of the rental property.

The Seller issued a 2 Month Notice to End Tenancy for Landlord’s Use dated March 31, 2021 with an effective date of May 31, 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 Seller did not provide information about the purchaser on the 2 Month Notice. The tenants submit they later asked for the identity of the purchaser and were provided information identifying the named respondent by the Seller.

The tenancy ended in accordance with the 2 Month Notice on May 31, 2021. The tenants submit they vacated the rental unit and shortly thereafter found that the rental unit was advertised for rent.

The landlord confirmed that the named respondent is the purchaser of the subject rental property and its current owner. The landlord confirms that they have not occupied the rental unit and instead listed it as available for rent in July 2021. The landlord submits that they did not give written request for the Seller to issue a 2 Month Notice and had no knowledge that there was an existing tenancy.

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 if:

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 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.

Accordingly, I find that under the *Act* the purchaser, the named respondent landlord, can be held liable for paying the tenants damages where steps have not been taken to accomplish the purpose set out on the 2 Month Notice.

Based on the testimony of the parties I am satisfied that the named respondent is the purchaser of the property and the appropriate party to be named in the present application.

While the landlord submits that they did not instruct the previous owner to issue the 2 Month Notice, the *Act* simply provides that where a 2 Month Notice has been issued and the stated purposes are not accomplished the tenant may seek compensation from the purchaser of the property. In the present case, the landlord submits the Seller was not instructed to issue the 2 Month Notice and they appear to have issued one when they had no obligation or evidentiary basis to do so.

While the Seller's conduct and representation may give rise to a claim between Respondent and the Seller, that does not impact the tenants' right to a monetary award pursuant to section 51(2) of the *Act*. The tenants filed their application for dispute resolution and named the purchaser as applicable under the *Act*.

I accept the undisputed evidence that the tenants were issued a 2 Month Notice which stated that the purchaser intends to occupy the rental unit. I accept the undisputed evidence that the rental unit has never been occupied by the landlord and it is currently being rented out. Therefore, in accordance with section 51(2) of the Act, as steps have not been taken to accomplish the purpose identified in the 2 Month Notice, I find that the tenants are entitled to a monetary award in the amount of \$24,000.00, 12 times the monthly rent payable.

As the tenants were successful in their application, they are also entitled to recover the filing fee from the landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$24,100.00. The landlord must be served with this Order as soon as possible. Should the landlord 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: May 31, 2022

Residential Tenancy Branch