



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNECT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

While the tenant KE and the original landlord BR ("original landlord") attended the hearing by way of conference call, the new owners did not. I waited until 1:50 p.m. to enable HG and SB to participate in this scheduled hearing for 1:30 p.m. The attending parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant, original landlord, their witness, and I were the only ones who had called into this teleconference.

The parties were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the parties from recording the dispute resolution hearing. The parties confirmed that they understood.

The original landlord confirmed that they were served with the tenants' application and evidence package. The tenant provided sworn testimony that the respondents HG and SB was served with the tenant's application for dispute resolution and evidence package on October 18, 2021 by way of registered mail to the home that they purchased, and intended to reside at. The tenants provided the tracking information in their evidence package. The tenant also testified that SB was personally served on November 15, 2021 with their notice of hearing and dispute resolution package. In accordance with sections 88, 89, and 90 of the *Act*, I find the respondents deemed served with the tenants' application and evidence for this hearing on October 23, 2022, 5 days after mailing. I also find SB duly served with the tenants' notice of hearing and

application. The tenants confirmed service of the original landlord's evidentiary materials. HG and SB did not submit any written evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on January 3, 2011, and ended on May 31, 2021 after the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use on March 24, 2021 for the following reason for ending the tenancy: "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". A copy was included as part of the tenants' evidence.

The original owner attended the hearing with their agent, and confirmed that they had served the tenants with the 2 Month Notice as required because the new owners requested in writing that they do so in order to occupy the home.

The tenants are seeking compensation as they discovered that the new owners HG and SB renovated the home instead, and rented out the home instead of occupying it. The tenants discovered the home for rent online advertising the rental unit for rent for \$2,500.00 and \$2,600.00 per month. The tenants were paying \$1,050.00 in monthly rent before the tenancy ended. The tenants observed that the new owners had renovated the home before re-renting it. The tenants testified that the lower suite was renovated into the two suites, and the upper floor was noted as renovated on the online advertisement which stated "fully renovated house for rent". The tenants testified that the new owners renovated the home and re-rented it instead of occupying it themselves.

Analysis

Section 51(2) of the *Act* reads in part as follows:

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 find that the new owners have failed to establish that they used the rental unit for the intended purpose as stated on the 2 Month Notice. In contrast, I find that the tenants have provided evidence to show that the home was renovated with the intention of renting out the suite for much higher rent, as supported by undisputed testimony and evidence provided. I note that the new owners elected not to appear at this hearing, nor has they provided any contrasting accounts by way of written evidence.

I find that BR served the 2 Month Notice as requested by HG and SB. I do not find BR has contravened the *Act* or tenancy agreement, and is therefore not required compensate the tenants.

I find that the new owners failed to comply with section 49(3) of the *Act* by failing to occupy the home as required by the 2 Month Notice. Accordingly, I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the new owners' noncompliance. I order that the new owners HG and SB pay the tenants a monetary order of \$12,600.00.

Conclusion

I issue a \$12,600.00 Monetary Order in favour of the tenants in compensation for HG and SB's failure to comply with section 49(3) of the *Act*.

The respondents HG and SB must be served with this Order as soon as possible. Should the HG and SB 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 17, 2022

Residential Tenancy Branch