



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, filed on September 20, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$29,220.00 for compensation from the purchasers related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51;
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two landlords named in this application, "purchaser KM" and "purchaser OR," (collectively "purchasers") did not attend this hearing, which lasted approximately 35 minutes. The two tenants, tenant DSKR ("tenant") and "tenant JCN," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. with me, the two tenants, and "occupant RJ" present. Occupant RJ was asked to leave the hearing and she exited the teleconference at 1:34 p.m. She did not testify at this hearing or hear the testimony of the two tenants. This hearing ended at 2:05 p.m.

At the outset of this hearing, I notified the two tenants and occupant RJ of the following information, after having reviewed the details and evidence submitted in the tenants' online RTB application. Occupant RJ was excluded from this hearing because she is not a proper tenant-applicant party in this application. Pursuant to section 64(3)(c) of the *Act*, occupant RJ's name was removed as a tenant-applicant party, as reflected on the cover page of this decision. Occupant RJ confirmed that she lived in the basement portion of the rental property house, and she had her own separate tenancy and tenancy agreement with the former landlords. The tenant confirmed that the tenants

lived in the upper portion of the rental property, and they had their own separate tenancy and tenancy agreement with the former landlords. The two tenants and occupant RJ confirmed that they did not obtain prior approval from the RTB to file a joiner application to have their claims joined together. They only filed one application for two separate tenancies, two separate rental units, two separate tenancy agreements, and two separate notices to end tenancy. I could not hear or make a decision about occupant RJ's claim, as she was not a proper tenant-applicant party in the tenants' application.

The two tenants confirmed their names and spelling. The tenant confirmed the rental unit address. She provided her mailing address for me to send a copy of this decision to both tenants after the hearing. She identified herself as the primary speaker on behalf of both tenants at this hearing. She said that tenant JCN is her son.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recording of this hearing by any party. At the outset of this hearing, the two tenants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both tenants. They had an opportunity to ask questions, which I answered. They confirmed that they were ready to proceed with this hearing and they wanted me to make decision. They did not make any adjournment or accommodation requests.

The tenant stated that she served four copies of the tenants' application for dispute resolution hearing package to the purchasers on September 29, 2021, all by registered mail. She said that she sent two copies each to purchaser KR and purchaser OR, one copy each to the rental unit and one copy each to the addresses provided by them on page two of the former landlords' Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 30, 2021 ("2 Month Notice").

The tenants provided four Canada Post tracking numbers with this application and the tenant verbally confirmed them during this hearing. She said that all four mail packages were returned to her as sender, for being refused. In accordance with sections 89 and 90 of the *Act*, I find that both purchasers were deemed served with the tenants' application on October 4, 2021, five days after their registered mailings. I find that the purchasers were served at addresses they provided for service on page 2 of the 2 Month Notice. Refusal of service does not avoid the deeming provisions of section 90 of the *Act*.

The tenant confirmed receipt of the former landlords' 2 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the former landlords' 2 Month Notice.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

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

Background and Evidence

While I have turned my mind to the tenants' documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began with the former landlords on November 24, 2018 and ended on June 30, 2021. Monthly rent of \$1,435.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenants and the former landlords returned this deposit in full to the tenants. A written tenancy agreement was signed by the former landlords and the tenants.

The tenant stated the following facts. The tenants vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the notice is June 30, 2021. The reason indicated on the 2 Month Notice was:

- *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 tenant testified regarding the following facts. The tenants were told to move out by the former landlords. The purchasers were supposed to live in the house. The tenants were forced to move away from the town, where they both lived and worked for so many years. There was nothing else to rent in the area. The tenants found a new rental unit.

The neighbors called the tenant and told her that no one moved into the rental property, and the house was being used as a storage space. Someone talked to the people living at the rental property, since there are renters living upstairs and downstairs.

Analysis

Rules and Burden of Proof

The tenants acknowledged during this hearing that they were not properly prepared for this hearing. They claimed that it was their first RTB hearing. Tenant JCN asked how to properly prepare for a future hearing, if one were to occur. I informed both tenants that I could not provide legal advice to them, and they could hire a lawyer for same. I informed them that the RTB website with links and information regarding the hearing and application process, was provided to them by the RTB, prior to this hearing, in their notice of hearing and application package.

The following RTB *Rules of Procedure* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the tenants did not properly present their application and evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

During this hearing, the tenants failed to properly go through their claims, amounts, or evidence submitted in support of their application. The tenant mentioned submitting documents but did not review them during this hearing. The tenants did not point me to

any specific documents, page numbers, provisions, or other such information. The tenants did not indicate what provisions of the *Act* they were applying under or how they arrived at the amounts that they claimed in this application.

This hearing lasted 35 minutes, so the tenants had ample opportunity to present their application, since the purchasers did not attend this hearing. I repeatedly asked both tenants if they had any other information or evidence to present, during this hearing.

Tenant JCN was provided with multiple opportunities to testify and speak at this hearing but chose not to do so, claiming that the tenant had adequately presented this application.

Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the tenants' evidence and testimony.

In their online RTB application details, the tenants stated the following (confidential information has been redacted and replaced as indicated below):

"I am writing this dispute on behalf of my son [tenant JCN] and I who rented the upper floor of [rental unit] House and my friend [occupant RJ] who rented the basement suite of said house (address same as above) I received a phone call from a friend/neighbour, who told me that the new owners never moved in to the house in question. Both [occupant RJ], my son [tenant JCN] and I had until June 30th 2021 1pm to vacate the property. On September 5 2021 my neighbour called to say some renters moved in."

I presume that the tenants filed this application on behalf of occupant RJ, pursuant to section 51(2) of the *Act*, for 12 months' rent compensation of \$1,000.00, totalling \$12,000.00, because the purchasers did not use the rental unit for the purpose stated on the 2 Month notice. The tenants provided a notice of rent increase, stating that the rent for occupant RJ's separate basement rental unit, was \$1,000.00 per month. The tenants did not provide the above amount or information during this hearing.

Occupant RJ was removed as a tenant-applicant party from this proceeding. Therefore, the tenants' monetary application for \$12,000.00 is dismissed without leave to reapply.

I presume that the tenants filed this application pursuant to section 51(2) of the Act, for 12 months' rent compensation of \$1,435.00, totalling \$17,200.00, because the purchasers did not use the rental unit for the purpose stated on the 2 Month Notice. The tenants did not provide the above amount or information during this hearing.

Section 49(5) of the Act states the following:

- (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;*
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

Section 51(2) of the Act establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the purchasers do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the Act. Section 51(2) states:

- 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.*

Section 51(3) of the Act states the following:

(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 accept the tenant's testimony that the tenants vacated the rental unit on June 30, 2021, pursuant to the 2 Month Notice. During this hearing, the tenants did not dispute that the former landlords sold the rental unit to the purchasers and the purchasers asked for vacant possession of the rental unit in order for the purchasers or a close family member to occupy the unit.

From my review of the tenants' documentary evidence provided for this hearing, the tenants provided a written copy of the buyer's notice to seller for vacant possession, dated April 30, 2021. This notice confirms that the rental unit was sold from the former landlords to the purchasers, pursuant to a contract of purchase and sale, dated April 29, 2021, and that the purchasers wanted vacant possession of the rental unit, effective on June 30, 2021. The tenants did not provide the above information during this hearing.

The tenants dispute that the purchasers or a close family member occupied the rental unit. I do not find the tenant's testimony, that she was told by neighbours that the rental unit was being used for storage and then re-rented to new tenants, to be sufficient evidence. During this hearing, the tenants did not provide the name or contact information of the neighbour, where the neighbour was living in relation to the rental property, how this neighbour obtained the above information, or the date the tenants received the above information from this neighbour. The neighbour did not appear at his hearing to provide affirmed testimony.

The tenants provided four text messages and a voicemail message in written form, as evidence for this hearing. The tenants did not review these documents at all during this hearing. The tenants did not indicate who these text messages were from, when they were sent, who they were sent to, or what they said.

From my review of the text messages, one message refers to information provided by another neighbour but does not include a name, stating "I don't want to involve my

neighbour.” This is hearsay evidence that was not confirmed by firsthand affirmed testimony at this hearing. During this hearing, the tenants did not provide the name or contact information of this other neighbour, where this neighbour was living in relation to the rental property, how this neighbour obtained the above information, or the date the tenants received the above information from this neighbour. This neighbour did not appear at his hearing to provide affirmed testimony.

From my review of the text messages, one states: “Just occasionally the odd person who were of east indian decent [sic] that was there once in a blue moon.” Another text message states (emphasis in original): “the new people that moved in are caucasian and NOT the owners of the house.” These text messages regarding ethnic background, do not prove that the purchasers or close family members did not occupy the rental unit.

On a balance of probabilities and for the reasons stated above, I find that the tenants provided insufficient documentary and witness evidence that steps have not been taken, within a reasonable period after the effective date of the 2 Month Notice, for the purchasers or a close family member to occupy the rental unit, or that the purchasers or a close family member did not occupy the rental unit for at least 6 months' duration, beginning within a reasonable period after the effective date of the 2 Month Notice.

Accordingly, the tenants' application for a monetary order of \$29,220.00 is dismissed without leave to reapply.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee. This claim is also dismissed without leave to reapply.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

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