



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on November 18, 2021 seeking compensation from the Purchaser. This is related to former Landlord's issuance of a Notice to End Tenancy for the landlord's Use of Property (the "Two-Month Notice"). issued on September 26, 2020. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Act* on June 20, 2022. In the conference call hearing I explained the process and provided each attending party the opportunity to ask questions.

At the outset of the hearing, the Purchaser, as the Respondent in this Application, confirmed they received notice of this hearing, as well as the Tenant's prepared evidence, from the Tenant in advance. On this basis, the hearing proceeded as scheduled.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the Two-Month Notice from the Purchaser, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Though the Tenant did not provide a copy of the tenancy agreement they had with their former Landlord, they spoke to the relevant details in the hearing. The agreement started in August

2014, and through a few increases in the basic rent amount, the rent they paid at the end of the tenancy was \$1,250.50. This amount for the basis for their claim for compensation.

The tenancy ended when the Tenant moved out from the rental unit at the end of November 2021. In the hearing the Tenant stated they were subject to the removal of their possession from the rental unit on November 23 and 24. At all times, the Tenant occupied only the basement suite at the rental property address.

The Tenant provided a copy of the Two-Month Notice issued by their former Landlord on September 26, 2020. This gave the move-out date, *i.e.*, the effective date, of November 30, 2020. On page 2, the indication is that the conditions of a sale have been completed, and the Purchaser asked for service of the Two-Month Notice for their own occupancy of the rental unit. The Purchaser's name and address was complete on page 2.

The Tenant in their evidence provided the Purchaser's instructions to the former Landlord, using a realtor-association form created for that purpose, dated August 8, 2020. The name of the Purchaser on this form matches that provided on page 2 of the Two-Month Notice.

After the Tenant's move out from the rental unit, they observed that the rental unit was for sale online. In their words this was "on the market for a new sale" in March 2021. The first indication was a YouTube video, dated March 26, 2021. That video contained clear pictures of the shots of their basement suite in place.

The telling detail from the Tenant that the unit was *not* lived in by anyone since the end of the tenancy was the placement of a soap dispenser in the kitchen which had not changed since the Tenant's left the unit in November 2021 (seen at precisely 1:08 in the video). Also, the Tenant removed the showerhead when they left, and at 1:40 the video shows an image of the bathroom with no showerhead, an indication in the Tenant's conclusion that no one occupied the rental unit since their end of their tenancy.

The Tenant also presented the result of their requested title search for the rental unit property. This shows, by the date of the Tenant's requested title search on May 17, 2021, the property was sold to another person, *i.e.*, not the Purchaser here. The Tenant submitted this was "well before 12 months, on the market since March 2021."

On their Application, the Tenant provided the total amount of their claim as \$15,006. This is based on 12 months of rent at \$1,250.50 per month.

The Purchaser, who attended the hearing, spoke to the sale of the home as advertised. They could not afford the purchase of the home, consisting of payments on a mortgage. They sold the property in May 2021. They originally intended to move into the rental unit home by April 2021; however, the Tenant upstairs dispute their notice to end the tenancy with their Landlord, and this extended the process of the Landlord moving in indefinitely.

Analysis

Under s. 49(5) of the *Act* a landlord may end a tenancy if a purchaser asks the landlord in writing to end the tenancy, in good faith, for their own occupancy of the rental unit.

A Tenant's compensation in these circumstances is governed by s. 51 which provides:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant . . . 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 . . . 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.

I find the Purchaser, as set out in s. 51, is the party who asked the former Landlord to end the tenancy. In this hearing, I find the Tenant provided sufficient evidence to establish that the Purchaser did not accomplish the stated purpose for ending the tenancy. That is, the Purchaser did not occupy the unit on their own as stated in the Two-Month Notice. I find the evidence shows the rental unit was advertised as available for sale in March 2021.

Moreover, the instruction form to the former Landlord specifies the Purchaser's instruction that "The Buyer(s) . . . intend in good faith to occupy the Property."

The onus in this hearing was on the Landlord to prove that they did follow through and use the rental unit for that stated purpose; however, they did not do so in this hearing process. The status of the rental unit, and ending a tenancy for the stated reason, is not contingent upon what happened in the adjacent upstairs rental unit. For the purposes of s. 51 and the process in which the Purchaser ended this tenancy, the two units are legally separate and identifiable as such.

I find this is clear evidence that the Purchaser did not use the unit for their own use as they so specified in the Two-Month Notice. There is no evidence the Purchaser took steps toward occupancy within a reasonable period of time. The online ads provided by the Tenant show

active postings online in March 2021. I find the Purchaser did not accomplish the stated reason for ending the tenancy. This is a breach of the *Act* governing the reason for the Purchaser ending the tenancy.

For these reasons, I find the Tenant has presented sufficient evidence to show they are entitled to compensation for a breach of s. 51 of the *Act* by the Purchaser. I grant the Tenant compensation in the amount specified by s. 51(2), the equivalent of twelve times the amount of the monthly rent of \$1,250.50. This is \$15,006.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the Tenant was successful in their claim, I find they are entitled to recover the \$100 filing fee from the Purchaser.

Conclusion

Pursuant to s. 51 and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$15,106. The Tenant is provided with this Order in the above terms, and they must serve it to the Purchaser as soon as possible. Should the Purchaser fail to comply with this Order, the Tenant may file the Order in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: June 20, 2022

Residential Tenancy Branch