



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on November 13, 2021 seeking compensation for the Purchaser’s ending of the tenancy, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 14, 2022.

Both the Tenant and the rental unit Purchaser (hereinafter the “Purchaser”) attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, both parties confirmed they received the prepared documentary evidence of the other. On this basis, the hearing proceeded.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”), 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

The Tenant provided a copy of the tenancy agreement, signed with their prior Landlord on May 9, 2020. The tenancy started on May 10, 2020, set for a fixed term to April 20, 2021. After that time the tenancy continued on a month-to-month basis. The tenancy agreement establishes that the rent was \$3,300 per month and this did not increase over the course of the tenancy.

The property was sold in 2021 to this Purchaser. The prior Landlord issued the Two-Month Notice to the Tenant on March 29, 2021, for the tenancy end date of May 31, 2021. The reason indicated on the document was that the sale conditions were satisfied, and the Purchaser asked the Landlord to serve the Two-Month Notice because they intended in good faith to occupy the rental unit. Though the Two-Month Notice gave the information to the Tenant of their right to dispute it, the Tenant did not do so.

In the hearing, the Tenant provided that they moved out from the rental unit on June 1, 2021. After this, the Tenant noticed a Facebook rental advertisement from a third party, for a room to rent at the rental unit, starting August 1st at \$1,400 per month. The Tenant identified the rental unit from the pictures that were identical to the rental unit, right to a single detail of a vase. The date of this online advertisement was July 18, 2021. The Tenant presented they did not know this third party who posted the advertisement looking for a roommate.

An acquaintance of the Tenant spoke to the third party who occupied the rental unit around that time. The third party confirmed they were not related to the Purchaser; rather, they were renting. The Tenant spoke to their acquaintance about this on July 23, and screenshots of that discussion appear in the Tenant's evidence. The acquaintance stated: "[the third party] is renting it with 2 other people."

In the hearing, the Tenant presented that they sent the documents associated with this hearing to the Purchaser at the rental unit address, assuming the Purchaser resided at that rental unit. The registered mail addressed to the Purchaser at the rental unit address was returned to the Tenant as unclaimed. From this, the Tenant concluded the Purchaser was not residing at the rental unit.

The Purchaser in the hearing provided that their purchase closed at the end of March 2021. They were excited and had every intention to make the rental unit property their new home. After this, their boss contracted COVID, and was on life support for a period of time, staying in the hospital for approximately three months. A letter in the Purchaser's evidence (from their

boss' partner) attests to the Purchaser running the business, "covering the work of 3 sales agents", and helping to care for their boss' own family.

In the hearing the Purchaser described the property remaining empty for a couple of months after the Tenant moved out. A client of theirs knew of the situation, and asked if 1 of their staff members could reside there during that time. This was for a short-term arrangement initially, and then that renter asked for a one-year fixed-term tenancy. That third party renter moved in at the end of July, with roommates then entering on August 1st and 15th. On the Tenant's direct question, the Landlord confirmed the rent amount going forward was higher than what the Tenant paid.

The Purchaser also described the renovations they had ready to begin shortly after possession; however, these were placed on hold in late April. A letter from their contractor dated May 28, 2022 is in the Purchaser's evidence. They submitted this shows their true intention was to live in the home. They had no plan to get the Tenant out in order to re-rent to others for a higher amount of rent. They submitted these were extraordinary circumstances that were beyond their control. They also stated that their hope was that it was a short-term situation. After dealing with the situation, they were "exhausted" and not ready to move into the rental until; therefore, they created a new rental agreement with the third party tenants who still remain in the rental unit.

In a written statement in their evidence, the Purchaser gave more detail: they were assisting the business and doing everything they could during that time. They had not given notice to end their own tenancy and stayed in that rental unit "while [they] worked through [their] boss getting better." Also:

Our home sat empty for just shy of two months until a client of ours who knew we purchased the home asked if we were interested in renting the property for a couple of months until life had calmed down for me. In August 2021 we agreed to rent the property to this clients staff member for a term of 12 months.

Analysis

The *Act* s. 49 allows for a landlord to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in the situation where a landlord issues a Two-Month Notice. This is covered in s. 51:

- (1) A tenant who receives a notice to end tenancy under s. 49 is entitled to receive from the landlord . . . an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (2) Subject to subsection (3), the landlord . . . must pay the tenant . . . 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 of 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 . . . if, in the director's opinion, extenuating circumstances prevented the landlord . . . 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.

The Residential Tenancy Policy Guideline #50 – that which gives a statement of the policy intent of the legislation – provides that extenuating circumstances are those “where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner’s control.”

Here, the Landlord issued the Two-Month Notice on March 29, 2021. The Tenant did not challenge the validity of the Two-Month Notice and moved out by June 1, 2021. The Tenant discovered the online ad, and an acquaintance confirmed that new tenants were renting at the rental unit.

I find the evidence shows the Landlord did not make steps to accomplish the stated purpose of issuing that Two-Month Notice. They had a stated intention to proceed with renovations commencing in June; that would entail them living in a designated area within the rental unit. I understand work pressure increased substantially during this time and the impact of their colleague becoming ill was serious. I conclude this had an impact in terms of the Landlord's ability to move into the rental unit in the immediate short term; however, it was not too long after this that the Landlord acquired new tenants, and the agreement they had in place with these new tenants was for quite some time after that. Though short-term plans were interrupted, I find there is no accounting for having a longer-term tenancy in place by August which is roughly two months after the Tenant here had to vacate.

I find extenuating circumstances did not prevent the Landlord from accomplishing the stated purpose within a reasonable period after the end of the tenancy. Beyond the immediate situation, the Landlord acquired new tenants in the rental unit. I find this fact shows the Landlord ended their intention to occupy the rental unit. This places the timeline in question

beyond a reasonable period after the end of the tenancy which is the qualifying timeline as set out in s. 51(3)(a).

I find this is a situation where s. 51(2) applies. For this, the Purchaser must pay the equivalent of 12 times the monthly rent payable under the tenancy agreement. This is the amount of \$39,600 as claimed by the Tenant.

Because the Tenant was successful in their Application, I grant the full amount of the \$100 Application filing fee to them.

Conclusion

Pursuant to s. 51 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$39,700. 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: July 7, 2022

Residential Tenancy Branch