



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

The Tenant seeks an order pursuant to s. 51 of the *Residential Tenancy Act* (the “*Act*”) for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement.

J.M. appeared as the Tenant. V.K. appeared as agent for the Landlord. A.K. appeared as the former property owner.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Is the Tenant entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on November 30, 2019.
- Rent of \$1,400.00 was payable on the first day of each month.

A copy of the tenancy agreement was put into evidence by the parties. The rental unit is a single detached home.

I was advised by the Landlord's agent that the residential property had been purchased by A.K., with A.K. confirming he took possession of the property on February 18, 2022. Shortly thereafter, the Landlord issued a Two-Month Notice to End Tenancy signed on March 26, 2021 (the "Two-Month Notice") on the basis that the Landlord would occupy the rental unit.

As mentioned above, the Landlord obtained vacant possession on May 26, 2021. The Tenant argued that the notice was effective on May 31, 2021, which meant he technically had possession up to that date. The Tenant confirmed that the keys to the rental unit were surrendered to the Landlord during the move-out inspection on May 26, 2021. The Landlord's evidence includes a copy of the move-out inspection report.

A.K. advised that he moved into the property on May 29, 2021. The Landlord's agent directed me to a series of utility, bank, and insurance statements that were put into evidence as proof that A.K. and his partner moved into the rental unit. A.K. testified that he lived at the rental unit full-time.

The Landlord's agent testified that she was contacted by A.K. in October 2021 about listing the property for sale. The Landlord's agent advised that she is a realtor and acted as the listing agent for the property's sale. She testified that the property was listed for sale on November 12, 2021, a conditional offer was accepted the same day, and the sale closed on December 17, 2021. A.K. testified that he vacated the property on December 16, 2021. The Landlord's evidence includes text messages dated December 16, 2021 between A.K. and the agent regarding what was to be done with the keys for the property.

The Landlord's agent submitted that A.K. moved into the rental unit and occupied it for at least 6 months such that the Tenant is not entitled to compensation.

The Tenant directed me to information from BC Assessment which indicates the property sold on November 12, 2021. The Landlord's agent testified that they cannot control the date put up on the BC Assessment website but emphasized that the title documents show title was transferred on December 17, 2021. The Landlord's evidence includes a mortgage statement showing that the last payment on the mortgage was December 17, 2021.

The Tenant testified that he saw photographs of the interior of the property and that it showed extensive renovations were undertaken by A.K. The Tenant argued that occupation was unlikely given the extent of the renovations. The Tenant's evidence does not include copies of the photographs in question. The Tenant argued what had occurred was a renovation.

A.K. testified that some renovations were undertaken, including building a fence for his dogs and painting within the property. A.K. emphasized that he lived within the property full time from late May 2021 until mid December 2021.

Analysis

The Tenant seeks compensation equivalent to 12 times the monthly rent after being served with a Two-Month Notice.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

The Tenant argued that he had possession of the rental unit until May 31, 2021 as per the effective date of the Two-Month Notice. However, the Tenant confirmed the keys to the rental unit were surrendered during the move-out inspection on May 26, 2021. The Landlord's evidence includes a copy of the move-out inspection, which shows that it

was completed on May 26, 2021. A tenant cannot have possession of a rental unit if they surrendered the keys giving them access to the rental unit to the landlord. The evidence is clear that the Landlord obtained vacant possession of the rental unit on May 26, 2021, which is the day I find that the tenancy ended.

In the present instance, I accept the undisputed evidence from A.K. that he moved into the property on May 29, 2021. This is supported by the various invoices put into evidence. I find that the Landlord occupied the rental unit within a reasonable time of getting possession of the rental unit.

The Landlord admits to listing and selling the property. However, s. 51(2) of the *Act* only imposes an obligation to accomplish the purpose stated within the notice in a reasonable time and that it be used for that purpose for at least 6 months. Nothing in the *Act* or the Policy Guidelines prevents the Landlord from listing the property for sale within the relevant time frame provided the property was still occupied for at least 6 months.

The Landlord's evidence confirms that A.K. and his partner lived within the property over the relevant period. A.K. testified that he moved out of the property on December 16, 2021, which was not directly contradicted by the Tenant. The text message exchange dated December 16, 2021 in the Landlord's evidence includes a query from the agent in which she asks "are you all moved out". This corroborates that A.K. lived in the property and had finished moving out the day before the sale closed.

The Tenant directs me to information from BC Assessment showing the last sale being on November 12, 2021. This date corresponds with the day the agent indicates the offer was accepted. However, the mortgage statement is persuasive on when the sale closed as it indicates the last payment was on December 17, 2021. Mortgages are secured on title and are paid out when title is transferred. This verifies the Landlord's submissions that the sale closed on December 17, 2021.

I place no weight in the Tenant's speculative argument that the property was extensively renovated such that occupation was unlikely. The Tenant provides no photographs or proof to support the allegation other than his bare assertion. A.K. emphasized he lived within the property and confirmed cosmetic renovations. He further testified to building a fence for his dogs, which only reinforces that he did, in fact, live at the property.

I find that the Landlord has established that A.K. occupied the property on May 29, 2021 and moved out of the property on December 16, 2021. This exceeds the 6-month residency requirement imposed by s. 51(2) of the *Act*. Accordingly, I find that the Tenant is not entitled to compensation under s. 51(2).

Conclusion

The Landlord has established that the property was occupied within a reasonable time and for at least 6 months. The Tenant's claim for compensation under s. 51(2) of the *Act* 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: August 25, 2022

Residential Tenancy Branch