



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenant (hereinafter, the “Tenant”) filed an Application for Dispute Resolution on January 4, 2022 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 August 26, 2021. 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 August 11, 2022. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The Purchaser, named as the Respondent, did not attend the telephone conference call hearing.

Preliminary Matters

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Purchaser with the Notice of Dispute Resolution for this hearing. This means the Tenant must provide proof that they served the document at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The Tenant set out how they served this Notice to the Purchaser via registered mail on January 13, 2022. This is the same day that the Residential Tenancy Branch issued the Notice to the Tenant. This is the time limit set in the *Residential Tenancy Branch Rules of Procedure*. The Tenant provided they sent this mail to each of the four named

individuals on the Two-Month Notice, using the address provided on that document. This address is verified by the document called 'Buyers Notice to Seller for Vacant Possession' that appears in the Tenant's own evidence. The Tenant stated each package they sent included all the evidence they intended to rely on for this hearing.

In the evidence the Tenant provided images of each receipt for registered mail, and its associated registered mail label. They stated that one of these packages was returned to them as unclaimed.

Based on these submissions, and proof in the form of tracking information, I accept the Tenant served the Purchaser with Notice of this hearing and their evidence in a manner complying with s. 89(1)(c) of the *Act*. The hearing thus proceeded in the Purchaser's absence.

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

The Tenant provided a copy of the tenancy agreement they had with their former Landlord. The agreement started on February 1, 2018, through to the end of tenancy on November 1, 2021. The Tenant stated they moved out from the rental unit a couple of days prior to October 31, 2021. This was the provided end-of-tenancy date that appeared on the Two-Month Notice.

The Tenant paid \$1,650 per month in rent from the start of the agreement through to the end of the tenancy. This amount forms the basis for their claim for compensation.

The Tenant provided a copy of the Two-Month Notice issued by their former Landlord on August 26, 2021. This gave the move-out date of October 31, 2021. On page 2, the indication is that the conditions of a sale have been completed, and the Purchaser asks

for service of the Two-Month Notice for their own occupancy of the rental unit. The Purchaser's name and address was completed on page 2.

The Tenant in their evidence provided the Purchaser's instruction to the former Landlord, using a realtor-association form created for that purpose, dated August 16, 2021. The Tenant's former Landlord provided this document to the Tenant with the Two-Month Notice. The address and name of the Purchasers on this form matches those provided on page 2 of the Two-Month Notice.

After the Tenant's move out from the rental unit, their neighbour from across the street observed that the unit remained empty for quite awhile. Also, a family member who lives nearby observed the same. The Tenant then discovered an advertisement for rental of the unit, before January 6, 2022 via Facebook. The Tenant provided a set of online advertising material in their evidence:

- The rental unit is shown as "duplex 2400\$ for 3 bedroom" -- one part of the ad shows the street address
- Another page of the ad showing the same name as the Purchaser on the Two-Month Notice
- A separate photo shows the available basement unit from the same rental unit property
- Another page has the photos for the basement rental unit (at \$1,200 per month) side-by-side with the Tenant's former rental unit, as the "duplex upper floor" (at \$2,300 per month)

The Tenant then observed the rental unit for sale in February 2022. They provided an image of the sale ad on a sales platform, with the date present on the screen image of February 1, 2022. The sale price for the home, bearing the same address as the rental unit, was \$1,589,000. In the hearing the Tenant described how they were looking for a home to live in after this time, and a realtor advised them that this former rental unit property was sold around March 2022.

On their Application, the Tenant provided the total amount of their claim as \$21,339.45. This is based on 12 months of rent at \$1,650 per month, and other expenses to them.

In the hearing the Tenant added their request for compensation for the cost of moving, at \$1,539.45. They also provided the total of the cost of registered mail they paid, at \$49.08, and the cost to them for forwarding their mail to a new address when the tenancy ended, at \$61.16.

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. 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 rent as early as January 2022, which is a very short timeframe after the end of this tenancy on October 31, 2021. Two other advertisements verify that the rental unit was on offer to new tenants. Additionally, I find the Purchaser advertised the unit for sale a short time after this, by February 1, 2022.

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."

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 January and February 2022. 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 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 \$1,650. This is \$19,800.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The Tenant claimed for moving costs and the cost for forwarding their own mail. They did not provide verification of the amounts they paid in their evidence. Without proof of the value of loss to them, I dismiss this piece of their Application.

The *Act* does not provide for recovery of other costs associated with serving hearing documents; therefore, the cost of registered mail is not recoverable.

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 \$19,900. 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: August 11, 2022