



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC,**

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Residential Tenancy Act* (the “Act”) for compensation because the purchaser ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. Only evidence presented by the party who submitted it will be considered, in accordance with the Residential Tenancy Branch Rules of Procedure 7.4.

Issue(s) to be Decided

Is the tenant entitled to compensation under section 51(2) of the Act?

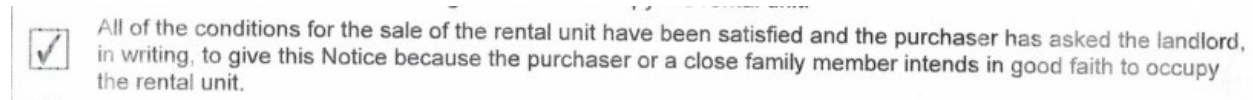
Background and Evidence

The tenancy began on July 1, 2010. Rent in the amount of \$1,200.00 was payable on the first of each month. The tenancy ended on September 30, 2021.

The tenant testified that they moved out of the rental unit on September 30, 2021, after receiving a Two Month Notice to End Tenancy for Landlord’s Use of Property, (the

“Notice”) dated July 13, 2021, from the Landlord(s). The tenant filed in evidence a copy of the Notice.

The reason stated within the Notice is as follows:



The tenant testified that the purchasers did not occupy the rental unit as required by the Act within a reasonable time. The tenant stated that the rental unit was empty and was listed for sale on November 18, 2021 and was still vacant and listed for sale on February 2, 2022.

The landlord testified that they purchased the property for their retirement residence, and it was their intention to renovate the property and move in as soon as possible. The landlord state that the renovation was delayed, due to unexpected lengthy submission process of the strata board.

The landlord testified that the strata board approval was on hold indefinitely and delayed their move into the premises and caused unanticipated hardship. The landlord stated that due to the stress of the situation they decided to sell the rental unit as they did not see the renovation of the flooring and kitchen being approved.

The landlord testified that when they received the tenant's application for dispute resolution seeking compensation on February 2, 2022, they cancelled the listing for the premises and moved in on February 13, 2022.

Analysis

Section 51 (2) of the Act provides:

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. [my emphasis]

(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.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a Tenant when a landlord ends a tenancy for Landlords use of property. The Guideline provides that a landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least six months.

With respect to extenuating circumstances, the Guideline provides the following: An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the Landlord from accomplishing the purpose or using the rental unit.

The Guideline provides circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The Guideline provides that the following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

Based on all of the above, the evidence and testimony from the Tenant and Landlords, and on a balance of probabilities, I find as follows:

The tenancy ended on September 30, 2021, the property was listed for sale on November 18, 2021, which that listing was cancelled on February 9, 2022, and it was not until February 13, 2022, that the purchasers moved into the premises, and this was only because they had received the tenant's application for dispute resolution and were attempting to avoid compensation under the Act.. However, this was four (4) and a half months after the tenancy had ended. I find this was not within a reasonable period of time after the tenancy had ended. Therefore, I find the purchaser must pay the tenant 12 times the month rent.

I have also considered extenuating circumstances where it would be unreasonable and unjust for a landlord to pay compensation.

While I accept the purchaser may have had delays in getting strata approval for making renovations to the premises. However, I find a delay in renovations is not an extenuating circumstance as that is not the reason the Notice was issued. The Act does not allow another reason to be substituted for the reason stated in the Notice. It was a personal choice to end the tenancy for the reasons stated within the Notice. The purchaser should have moved into the premises while waiting for any approvals necessary or could have waited until they received approval for renovations before ending the tenancy.

I find that the purchaser owes the tenant \$14,400.00 which is the equivalent of 12 times the \$1,200.00 monthly rent payable under the tenancy agreement.

Conclusion

The tenant's application for compensation is granted in the above stated amount.

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 31, 2022