



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AZ-TEC MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, MNDC, FF

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice), compensation for a monetary loss or other money owed, and to recover the cost of the filing fee.

The tenant, the tenant's advocate/friend, the landlord, PS, and the landlord's legal counsel (counsel) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenant's advocate, RL, said the tenants received the landlord's evidence late. The landlord, PS, said it was taped to the tenants' door and later, she noticed it had been removed. The landlord said that their evidence was just the facts of the case.

In addition, the tenants filed evidence on August 30, 2022, for the hearing on August 30, 2022. As all the tenants' evidence was required to be filed 14 clear days prior to the hearing, all of the tenants' additional evidence filed on August 30, 2022, is excluded.

Issue(s) to be Decided

Are the tenants entitled to the monetary compensation they seek from the landlord for the various listed reasons and recovery of the cost of the filing fee?

Background and Evidence

I heard evidence the tenancy started in May 2015. The tenant said the tenancy ended on November 7, 2020, and the landlord said it ended on November 11, 2020.

The parties agreed the monthly rent at the end of the tenancy was \$800.

The rental unit was a manufactured home in a manufactured home park.

Although the listed landlord is a company name, the landlord attending, PS, stated she is the sole owner of the company.

The tenant's total monetary claim is \$16,900, which included the filing fee of \$100. The tenants applied for \$9,600 for the equivalent of 12 times the monthly rent payable under the tenancy agreement, at the end of the tenancy, for receiving the landlord's 2 Month Notice, as it has not been used for the stated purpose listed on the Notice.

The tenants also claimed \$7,200 in general compensation.

The Notice received from the landlord was dated October 31, 2020, listing an effective move-out date of October 31, 2020. The reason for ending the tenancy states that "all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit". Filed in evidence was a

copy of the Notice as well as a handwritten statement filed by the landlord that the actual effective move-out date was December 31, 2020.

The tenant's application is based upon their assertion that the rental unit was not used for the stated purpose. The tenants wrote in their application the following:

Landlord did not sell the property as stated in the Notice to End Tenancy. One year later the property is still registered in the Landlords name. After eviction the Landlord wrote a letter to the Strata Council giving permission for the landlords new tenant, () to sit on council. 12 months rents @ \$800.00*

[Reproduced as written except for anonymizing personal information to protect privacy]

In response to the tenant's claim, the landlord proceeded first in the hearing.

The landlord submitted that the buyers asked to be let out of the deal and they bought another trailer.

The landlord referred to her documentary evidence. Included in the documentary evidence was a handwritten note from two purchasers, a Contract of Purchase and Sale, dated November 3, 2020, and an addendum to the Contract of Purchase and Sale.

As to the tenants' monetary claim of \$7,200.00, the tenants wrote the following:

Landlord started moving in new tenant on or about Nov 7 2021 before the existing tenant's move out date of December 31, 2021. The Tenant had to secure temporarily living arrangements for a couple months at an Air Bnb until the tenant could secure a new rental Tenant missed work due to the extreme stress around having to suddenly move. Tenant had to pay storage for household items while living in Air BnB

[Reproduced as written]

In support of this claim, the tenant said that he was forced to leave and had no place else to go. The tenant said they moved out due to the harassment by the landlord and

because the locks were changed. The tenant said the new tenants began to move into the rental unit.

The documentary evidence filed to support this claim included an invoice for the rental of a cabin for November 7-31, 2020, in the amount of \$5,083.05 and an invoice for a cabin rental for December 1-31, 2020, in the amount of \$6,398.70.

In response, the landlord said that she did not change the locks and it was the tenants who handed the keys to the buyers. The landlord said the tenants moved out all their items on November 11, 2020.

Counsel said that the invoices for the cabin rental were from RL, their friend and advocate.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Both parties submitted a significant amount of evidence that I found was unrelated to the issues at hand, all of which I have reviewed. The tenants' evidence showed that the parties have had a contentious relationship, which I find is not relevant for the present dispute. I have only considered the relevant evidence.

In the case before me, the undisputed evidence is that the landlord issued the tenants a 2 Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act. The effective date of October 31, 2020, the date the Notice was issued is automatically corrected under the Act to the legal effective date, or in this case, December 31, 2020. The evidence shows the tenants vacated the rental unit by November 11, 2020. While the tenant said at the hearing he vacated on November 7, 2020, their documentary evidence contradicts this statement as they wrote they were moving out on November 11, 2020.

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

The landlord marked the Notice indicating that “all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit”.

In this case, the evidence included a handwritten notice from two individuals who the landlord confirmed never bought the property. Additionally, I find the evidence shows that the Contract for Purchase and Sale was dated 4 days after the Notice was issued, and that this Contract listed many conditions.

For this reason, I find at the time the landlord issued the Notice to the tenants, she had not entered into an agreement in good faith to sell the rental unit, which means the landlord has not complied with section 49 (5)(a) or (b) of the Act.

Even at that, the potential purchaser on the Contract for Purchase and Sale never moved into the rental unit, so the Notice fails on another point.

For this reason, I find the rental unit has not been used for the stated purpose and I find the landlord had no ground under section 49 of the Act to issue the Notice.

Section 51(2) of the Act provides that the landlord or purchaser who asked the landlord to give the notice to end the tenancy, 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, does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice.

For the above reasons, I therefore find the tenants are entitled to monetary compensation equivalent to 12 months' rent as the rental unit was not used for the stated purpose listed on the 2 Month Notice.

I further find I do not have to consider extenuating circumstances in this matter, to excuse the landlord from paying this amount, as I have found the landlord had no ground to issue the Notice in the first place.

As a result, I grant the tenants a monetary award of **\$9,600** as requested, which is the equivalent of monthly rent of \$800 for 12 months.

Additional monetary claim –

As to the tenants' other monetary claim of \$7,200, under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

The tenants' evidence supporting this claim, two cabin rental invoices, totals \$11,481.75. For this reason, I find the tenants submitted insufficient and inconsistent evidence to support a claim of \$7,200. An applicant must provide a breakdown of a claim explaining how they calculated the amount claimed.

Additionally, an applicant can only recover compensation for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act. The tenants were not legally required to vacate the rental unit earlier than December 31, 2020, and I find it was the tenants' choice to vacate early. There was no evidence supporting that the landlord forced the tenants to move and the landlord said the tenants handed the keys to the potential purchasers. I find the landlord's version of events just as likely as not to be true.

I find the Act does not allow for tenants' choices, and for all these reasons, I find the tenants submitted insufficient evidence to support this claim. I **dismiss** the claim, without leave to reapply.

As the tenants were partially successful with their claim, I grant the tenants recovery of their filing fee of **\$100**.

As a result, I grant the tenants a monetary order (Order) of \$9,700, the equivalent of monthly rent of \$800 for 12 months, or \$9,600, and the cost of the filing fee of \$100.

Should the landlord fail to pay the tenants this amount without delay, the tenant must serve the Order on the landlord for enforcement purposes by means under section 88 of

the Act. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent of \$9,600 and recovery of the filing fee of \$100 is granted. The tenants have been granted a monetary order for \$9,700.

The tenants' claim for \$7,200 is dismissed, without leave to reapply, due to insufficient evidence.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 27, 2022

Residential Tenancy Branch