



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the Tenants' application under the Residential Tenancy Act (the "Act") for:

- compensation due to the Landlords (the "Purchasers") having ended the tenancy and not complied with the Act or used the rental unit for the stated purpose pursuant to sections 49 and 51; and
- authorization to recover the filing fee for this application from the Purchasers pursuant to section 72.

The Tenants and the Purchasers attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenants confirmed they served each of the Purchasers with the notice of dispute resolution proceeding package and the Tenants' documentary evidence (collectively, the "NDRP Packages") via registered mail. The Tenants submitted registered mail receipts and tracking numbers in support. The Purchasers acknowledged they received the NDRP Packages. Based on the foregoing, I find the Purchasers were served with the NDRP Packages in accordance with sections 88(c) and 89(1)(c) of the Act.

The Purchasers relied on oral testimony for this hearing.

Issues to be Decided

1. Are the Tenants entitled to compensation under section 51(2) of the Act?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is the upper suite of a house. The Tenants testified their tenancy with the former landlords of the rental unit commenced on November 1, 2012 and ended on July 31, 2021. The Tenants testified that at the time their tenancy ended, rent was \$1,296.50 per month.

The Tenants confirmed their tenancy ended pursuant to a two month notice to end tenancy dated April 29, 2021 (the “Two Month Notice”).

A copy of the Two Month Notice has been submitted into evidence. The reason for the notice is stated as follows:

All of 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.

A document titled “Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession” and dated April 27, 2021 (the “Buyers Notice”) is appended to the Two Month Notice. This document is signed by each of the Purchasers and confirms that the Purchasers require all tenants of the rental property to vacate by 1:00 pm on July 31, 2021.

The Tenants submitted the Purchasers had evicted them on the premise that the Purchasers or their close family member intended to occupy the rental unit, but none of them have since occupied the rental unit.

The Tenants explained that there are three suites in the rental property. The Tenants stated that the occupants in the other two units had vacated voluntarily.

The Tenants testified the Purchasers made some minor renovations then listed the rental property for double the rent, less than 6 months after their eviction. The Tenants submitted printouts of ads from Facebook and Craigslist dated December 15, 2021, which listed the rental unit for \$2,800.00 per month.

The Tenants submitted that the Purchasers incorporated their ownership of the rental property under a holding company. The Tenants submitted a title search of the rental property dated September 17, 2021 into evidence. The title search shows that title to the rental property is held by a corporation with the same mailing address as that of the Purchasers stated in the Buyers Notice. The title search further indicates that the application for title transfer was received on August 9, 2021 and entered on August 19, 2021.

The Tenants testified that after they moved out, they went by the rental property to see if anyone had moved in. The Tenants testified that they saw people working on the property, but the mail was piled up and there was no evidence of people living in there. The Tenants argued that if the Purchasers wanted to renovate the rental property, they would have been required to give the Tenants 4 months' notice.

In response, one of the Purchasers, DW, testified that the Purchasers had intended for DW's parents to live in the rental unit. DW testified that they chose the rental unit for his parents as it has the best view out of the three suites.

DW testified that his parents are in another country. DW testified that due to the pandemic, his parents' country stopped renewing passports. DW testified that his father's passport expired and so he could not come back to Canada.

Upon questioning, DW answered as follows:

- the Purchasers made their offer to purchase the rental property in summer 2021;
- DW's father's passport had expired "a couple of months before" that time; and
- DW's parents' country had stopped renewing passports "last summer", but they had been told that it would resume in "about 6 months' time"; and
- DW's parents have been trying to get a passport "every couple of weeks" but it did not happen.

DW testified his parents are currently still abroad and cannot come to Canada because the passport renewal process in their country has not re-opened.

DW testified that as a result of the change in circumstances, the Purchasers decided to rent out the rental unit in January 2022. DW stated that the main suite and the basement suite in the rental property were meant to be rented out for investment from the beginning.

One of the Purchasers, TL, confirmed that the Purchasers assigned the purchase contract for the rental property from themselves to their holding company prior to completion. TL confirmed that their holding company took possession of the rental property on or around August 9, 2021. TL testified the Purchasers performed some minor renovations of the rental unit but otherwise left it empty until it was rented out in May 2022. TL testified that none of the Purchasers own any other tenanted properties and that this is their first “venture”.

Analysis

1. Are the Tenants entitled to compensation under section 51(2) of the Act?

Section 49(5) of the Act permits a landlord to end a tenancy in respect of a rental unit if:

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49(1) defines a “purchaser” for the purposes of section 49(5) to be a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

In this case, I have reviewed a copy of the Two Month Notice and find that it is a valid notice to end tenancy in form and content under section 52 of the Act. I find the Tenants’ tenancy was ended on July 31, 2022 pursuant to the Two Month Notice and in accordance with section 49(5) of the Act.

Based on the evidence before me, I find that all three Purchasers had signed the Buyers Notice in accordance with section 49(5)(c)(i) of the Act. Furthermore, as the Purchasers had agreed to purchase 100% of the interest in the rental property at the time they signed the Buyers Notice, I find the Purchasers collectively qualify as a “purchaser” under section 49(1) of the Act.

I accept the Tenants’ undisputed evidence that at the time their tenancy ended, the rent they paid was \$1,296.50 per month.

In this application, the Tenants seek compensation of 12 months’ rent from the Purchasers under section 51(2) of the Act, which states:

Tenant's compensation: section 49 notice

51 [...]

(2) 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 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, except in respect of the purpose specified in section 49(6) (a), 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.

Policy Guideline 50. Compensation for Ending a Tenancy (“Policy Guideline 50”) states:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Based on the evidence presented, I am satisfied that the Purchasers did not accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Two Month Notice and have not used the rental unit for the stated purpose for at least 6 months’ duration.

I find the stated purpose for ending the tenancy under the Two Month Notice was for the Purchasers or their close family members (i.e. a parent, spouse, or child; or the parent, spouse, or child of a spouse) to occupy the rental unit. I find the Purchasers acknowledged that after their holding company took possession of the rental property in August 2021, the rental unit was renovated and otherwise kept vacant until it was rented out in May 2022. I find that none of the Purchasers or their close family members had ever moved into or occupied the rental unit for any period of time.

I note that according to Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, the term “occupy” under section 49(5) of the Act means to “occupy for a residential purpose”, which means to use the rental unit as living accommodation or as part of one’s living space. As such, a purchaser cannot ask the landlord to end a tenancy under section 49(5) of the Act to perform renovations or for vacant possession of the rental unit.

Based on the foregoing, I conclude that the Purchasers did not accomplish the stated purpose of the Two Month Notice as required under section 51(2) of the Act.

Where a purchaser has not accomplished the stated purpose of the notice to end tenancy as required under section 51(2) of the Act, section 51(3) allows the purchaser to be excused from paying compensation to the tenant if there were “extenuating circumstances” that prevented the purchaser from accomplishing the stated purpose of the notice, as follows:

- (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 applicable, from
 - (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
 - (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Policy Guideline 50 states as follows regarding “extenuating circumstances”:

G. EXTENUATING CIRCUMSTANCES

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing

the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

These are circumstances 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. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

In this case, I find the Purchasers have not provided sufficient evidence to prove on a balance of probabilities that there were extenuating circumstances which prevented them from accomplishing the stated purpose of the Two Month Notice.

Based on the evidence before me, I am unable to make a finding that DW's parents were prevented from moving into the rental unit due to an unforeseen change in their country's passport renewal process. I find the Purchasers' testimonies lacked key details such as:

- The date that DW's father's passport is said to have expired;
- The date that DW's parents' country is said to have ceased renewing passports;
- The approximate date that the Purchasers became aware of this problem;
- Reasons for DW's parents to move back to Canada from abroad; and
- A description or timeline of any specific attempts or efforts made by the Purchasers and/or DW's parents to accomplish the stated purpose of the Two Month Notice.

I find the omission of these details to greatly weaken the persuasive force of the Purchasers' argument. Furthermore, I find the Purchasers have not submitted any extrinsic or documentary evidence in support of their assertions, such as government notices, communication records, or evidence from DW's parents.

Accordingly, I find the Purchasers have not accomplished the stated purpose of the Two Month Notice and have not established on a balance of probabilities that there were extenuating circumstances preventing the Purchasers from doing so.

I conclude that pursuant to section 51(2) of the Act, the Tenants are entitled to compensation of 12 months' rent from the Purchasers, in the amount of $\$1,296.50 \times 12$ months = \$15,558.00.

2. Are the Tenants entitled to recover the filing fee?

The Tenants have been successful in this application. I grant the Tenants' claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenants on this application is calculated as follows:

Item	Amount
Section 51(2) Compensation ($\$1,296.50 \times 12$ months)	\$15,558.00
Filing Fee	\$100.00
Total Monetary Order for Tenants	\$15,658.00

Conclusion

Pursuant to sections 51(2) and 72(1) of the Act, I grant the Tenants a Monetary Order in the amount of **\$15,658.00**. This Order may be served on the Purchasers, filed in the Small Claims Division of the Provincial Court, and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 23, 2022

Residential Tenancy Branch