



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation that is related to a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice").

This matter commenced on May 3, 2022. At the request of the purchaser SW and by consent of the tenant this matter was adjourned to have the purchaser ML added as a respondent. The interim order should be read in conjunction with Decision.

This matter reconvened on this date, September 16, 2022. The tenant and the tenant's representatives and the purchaser ML appeared. ML confirmed they received the tenants' application, and evidence.

ML did not submit any evidence.

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 February 1, 2014. Rent in the amount of \$1,224.00 was payable on the first of each month. The tenancy ended on May 31, 2021.

The tenant testified that they moved out of the rental unit on May 31, 2021, after receiving a Two Month Notice to End Tenancy for Landlord's Use of Property, (the "Notice") dated February 8, 2021, from the Landlord(s). The tenant filed in evidence a copy of the Notice.

Filed in evidence is a copy of the Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession, which shows the purchasers SW and ML requested in writing to end the tenancy.

The reason for ending the tenancy within the Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse).

The tenant's advocate submits that the purchaser did not use the property for the intended purpose. The advocate submitted that on August 17, 2021, the tenant discovered that the property was listed for sale. Filed in evidence is a real estate listing of the property, the detail within the listing is as follows:

Property Information:

Three bedroom ocean view home, close to all amenities! Enjoy the beautiful ocean views from the dining room, deck, and upstairs bedrooms. Plus tons of storage in the unfinished basement below. Future development potential with RM3 zoning, allows for an apartment building or a minimum three dwelling Structure, though current house is grandfathered in. Main level is bright and spacious and open concept. Master bedroom on the main. Great fenced yard, and property has alley access. Electrical has just been professionally upgraded, brand new baseboards, and there is a newer oil furnace with forced air ducting in place. Exterior has been freshly painted May 2021. This property may be sold in conjunction with the RM3 zoned lot next door.

On May 3, 2022, SW the purchaser, testified that they had no control over the property as they only had 10% interest. SW stated that they did sign the document with the co-purchaser ML that vacant possession was required. SW stated that it was never their intention or the intention of ML to reside on the property. SW stated it was supposed to be ML daughter; however, as they have no contact with ML, they have no information on this matter to provide.

ML the purchaser, testified that they took possession of the property on June 1, 2021, and it was the intention that their daughter occupy the rental unit.

ML testified that they that did not do a home inspection and the property was worse off than they had thought. ML stated that when they viewed the property it was odd that the tenant using a space heater, had plastic on the windows and there were lots of blankets.

ML stated when they took possession of the property the basement was full of items including 8 mattress which they paid to remove, and they discover the rental unit was full of rats.

ML testified that the rental unit was unlivable, and they cannot believe how the tenant was living in those conditions.

ML testified that due to the conditions that their daughter was not prepared to reside in the premises. Although their daughter did stay a few nights while they were repairing the premises.

ML testified that the property was not sold and transferred to the new owner until January 2022, and they did have the property in their possession for over six months.

ML stated if they are found liable to pay the tenant, that the debit should be divided 50% between the co-owner SW.

The tenant's advocate ask ML would they have sold the property within the six month period if a buyer had offer to purchase the property. ML stated that they would have sold the property.

The tenant testified that the belongings in the basement were not theirs as they belonged to the owner. The tenant stated the basement can only be accessed from the outside. The tenant stated there was not a rat issue in the rental unit. The tenant stated they would have continued living there if it was not for the Notice and having to move caused them financial hardship.

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.

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 purchasers, and on a balance of probabilities, I find as follows:

In this case the onus is on the purchasers to prove they met their obligations under the Act or that they had an extenuating circumstance that prevented them from using the rental unit for the stated reason.

In this case, the purchasers gave the tenant the Notice because the purchaser ML intended to have their daughter reside in the rental unit. I do not find having their daughter sleep in the rental unit on the odd occasion while repairs were being made meets the requirements of the Act. Further, this would not support the rental unit is unlivable.

While I accept repairs may have been required as the real estate listing shows the home was built in 1948. However, that is not the reasons the Notice was issued. The extent of the repairs should have been known prior to issuing the Notice. The purchaser's failure to do their due diligence, by not having an inspection completed on the property is not an extenuating circumstance this was a personal choice when buying the property.

Further, I do not accept the purchaser ML testimony that the rental unit was not livable when the tenant vacated due to their actions. The purchaser provided no supporting evidence to prove that the condition of the rental unit was not in the same condition as when they viewed the premises and decided to purchase the property and give notice to the tenant.

Even if I accept repairs were necessary due to age of the premises, such as electrical and heating upgrades that are noted in the real estate listing, I find the purchaser was still required to meet their obligation under the Act. The purchaser ML daughter was required to occupy the premises for at least six months within a reasonable period after the effective date of the Notice. The fact that their daughter did not want to reside in the rental unit, was a personal choice and not an extenuating circumstance.

Further, the landlord listed the property for sale. The real estate listing was printed by the tenant on August 17, 2021 and could have been listed before that date. This was just over two months after the tenant vacated. However, the details within the real estate listing, and photographs clearly shows that property was in a reasonable state on that date, I find the purchasers could have met their obligations under the Act.

While the purchaser testified that the property was sold after the six month period. However, simply making repairs and renovations and waiting for the property to sell does not met their obligation under the Act.

Had the purchasers waited to fully inspect the premises after they took possession and discovered the premises need repairs or renovation that required vacant possession. They could have obtained the required permits, such an electrical, and then issued a notice to end tenancy pursuant to section 49(6) of the Act. I note this portion of the Act is no longer in effect but was at the time the Notice was issued.

The Act does not allow a purchaser to give notice to end tenancy for one reason and then attempt to substitute another reason.

Based on the above I find the purchasers did not meet the requirements of the Act and has failed to prove an extenuating circumstance. Therefore, I find the purchaser must pay the tenant 12 times the monthly rent of \$1,224.00 for a total of **\$14,688.00**.

I grant the tenant a monetary order in the above amount pursuant to section 51 and 67 of the Act. This Order may be enforced the Provincial Court (Small Claims). The purchasers are cautioned that costs of such enforcement are recoverable from the purchasers.

Further, I decline the purchaser ML request to make each purchaser responsible for pay 50% of the above award. Both purchasers are separately, and jointly responsible for the debt owed. This means the tenant can collect the above award from either of the purchasers to satisfy the debt owed. I also note the purchaser SW only had 10% interest in the property, and it was the purchasers ML daughter who was to live in the rental unit. I find the purchaser ML request unreasonable. .

Conclusion

The tenant's application for monetary compensation relating to a notice to end tenancy is granted.

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 21 2022

Residential Tenancy Branch