



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call in response to three separate Applications for Dispute Resolution filed by the Tenants January 09, 2022 (the “Applications”). The Applications were joined and heard together because they involve the same facts and issues. The Tenants applied for compensation because the Purchaser ended the tenancy and did not comply with the *Residential Tenancy Act* (the “Act”) or use the rental unit for the stated purpose. The Tenants also sought to recover their filing fees.

The Tenants appeared at the hearing with E.M. to assist. The Purchaser appeared at the hearing with Legal Counsel. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

Legal Counsel and the Purchaser confirmed receipt of one hearing package and the Tenants’ evidence. Legal Counsel and the Purchaser confirmed they have no issue with the Applications being heard together and no issue with service. The Tenants confirmed receipt of the Purchaser’s evidence and confirmed there are no issues with service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. In this decision, I will only refer to the evidence I find relevant to the issues before me.

Issues to be Decided

1. Are the Tenants entitled to compensation because the Purchaser ended the tenancy and did not comply with the *Act* or use the rental unit for the stated purpose?
2. Are the Tenants entitled to recover their filing fees?

Background and Evidence

The Tenants each sought \$6,900.00 in compensation pursuant to section 51 of the *Act* based on the Purchaser failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 28, 2020 (the "Notice").

The Notice was submitted. The Notice is addressed to E.M. The Notice relates to the rental unit address and does not include unit or room numbers. The Notice is signed and dated by a prior landlord, J.C. The Notice has an effective date of April 30, 2020. The grounds for the Notice are that all of the conditions for the sale of the rental unit have been satisfied and the Purchaser has asked J.C., in writing, to give the Notice because the Purchaser or a close family member intends in good faith to occupy the rental unit.

On April 21, 2020, the parties appeared before the RTB on File 965 which was a dispute of the Notice by the Tenants and E.M. The Notice at issue in File 965 is the same Notice at issue in this matter. As stated, the Notice is only addressed to E.M. The prior landlord, J.C., and the Purchaser appeared at the hearing. The Tenants and E.M. also appeared. The parties agreed about the tenancy agreements between the Tenants and E.M. and the prior landlord, J.C. Nobody present at the hearing raised the issue of the Tenants being co-tenants or tenants-in-common. The Purchaser testified at the hearing stating "I asked [J.C.] to give the Tenants notice, because I want to occupy the unit." On File 965, the Tenants were the Tenants and E.M. The Arbitrator dismissed the dispute of the Notice and upheld the Notice. The prior landlord, J.C., was issued an Order of Possession against the Tenants and E.M. based on the Notice.

On October 21, 2021, the parties again appeared before the RTB on File 362. I was the Arbitrator who decided File 362. In File 362, the Tenants and E.M. applied for compensation pursuant to section 51 of the *Act* based on the Purchaser failing to follow

through with the stated purpose of the Notice, the same Notice at issue in File 965. In File 362, I decided that the Tenants were tenants-in-common of the rental unit and not co-tenants (page 4). Given this, I decided the Tenants and E.M. had to file separate Applications for Dispute Resolution against the Purchaser. I proceeded to hear the matter as it related to E.M.

In File 362, the same sections of the *Act*, sections 49(5) and 51, were at issue. Further, the issue raised before me was when the Purchaser moved into the rental unit (page 9). E.M. submitted that the Purchaser moved into the rental unit in November of 2020 (page 6). The Purchaser testified that they moved into the rental unit June 15, 2020 (page 7). The Purchaser testified that the rental unit had been their primary residence since June 15, 2020, and they had occupied the entire house (page 7). The Purchaser testified that they lived in the rental unit while renovations were done (page 7).

Based on the evidence provided in File 362, I found it more likely than not that the Purchaser moved into the rental unit in November of 2020. The effective date of the Notice was corrected to May 31, 2020, in File 965. Therefore, I found the Purchaser moved into the rental unit six months after the effective date of the Notice (page 11). I found that six months was not “within a reasonable period after the effective date of the” Notice as required by section 51(2)(a) of the *Act* (page 11). I did not find it necessary to consider extenuating circumstances pursuant to section 51(3) of the *Act* because the Purchaser did not raise extenuating circumstances as an issue (page 11). Further, extenuating circumstances did not apply because the Purchaser testified that they followed through with the stated purpose of the Notice on June 15, 2020, which would have been within a reasonable period after the effective date of the Notice (page 11). I concluded that the Purchaser was required to pay E.M. 12 times their monthly rent being \$6,900.00 pursuant to section 51(2) of the *Act* (page 11, 12).

In this hearing, the Tenants testified about their tenancy agreements with the prior landlord, J.C. Tenant A.N. testified that their tenancy started in August of 2016 and was a month-to-month tenancy with rent being \$575.00 due on the first day of each month. Tenant S.M. testified that their tenancy started in 2013 and was a month-to-month tenancy with rent being \$575.00 due on the first day of each month. Tenant L.M. testified that their tenancy started in May of 2018 and was a month-to-month tenancy with rent being \$575.00 due on the first day of each month. The Purchaser testified that they have no knowledge of the tenancy agreements.

The Tenants testified that they all moved out of the rental unit May 17, 2020. The Purchaser did not know when the Tenants moved out of the rental unit.

As stated, the relevant facts in this matter were heard on File 362. The Purchaser raised two further issues on this hearing. First, that the Tenants were not provided a Two Month Notice to End Tenancy for Landlord's Use of Property. Second, extenuating circumstances applied.

In relation to the first argument, Legal Counsel for the Purchaser submitted that the Tenants were not issued a Two Month Notice to End Tenancy for Landlord's Use of Property because the Notice is only addressed to E.M., not to the Tenants.

I raised the issue of the prior hearing on File 965 because the Tenants' tenancies were ended pursuant to the Notice and an Order of Possession based on the Notice. Legal Counsel said the Purchaser did not know how many tenants were living in the rental unit when they asked the prior landlord, J.C., to issue the Notice. Legal Counsel also submitted that the Purchaser was unrepresented, did not understand what was happening and did not know what they were doing at the prior hearing on File 965.

For the Tenants, Tenant S.M. testified that the Tenants understood the Notice to relate to all of them given the prior hearing on File 965. Tenant S.M. testified that the initial contact from the prior landlord, J.C., about the Notice was made with both them and E.M. Tenant S.M. testified that the Tenants received Orders of Possession and moved out pursuant to the Notice and Orders of Possession.

In relation to the second argument, I told Legal Counsel the issue of extenuating circumstances could not be re-argued because the issue of whether the Purchaser owed E.M. compensation pursuant to section 51 of the *Act* was already heard and decided on File 362, in which the Purchaser did not raise extenuating circumstances. This matter involves the same facts as File 362 and therefore the Purchaser cannot now raise extenuating circumstances as an issue when they did not do so on File 362. Legal Counsel submitted that this is a new hearing, the Purchaser was not represented at the hearing for File 362, the Purchaser was unprepared and did not know what they were doing for the hearing on File 362 and so the Purchaser should be allowed to argue extenuating circumstances in this matter. I heard the parties on the issue of extenuating circumstances.

In relation to extenuating circumstances, Legal Counsel stated as follows. The Purchaser and their family moved into the rental unit in June of 2020; however, they had to move out from August to November of 2020 due to extenuating circumstances. The Purchaser and their family did not occupy the rental unit from August to November. The Purchaser had intended to do cosmetic renovations while living in the rental unit. When contractors started the cosmetic renovations and removed drywall, they discovered extensive mold in the rental unit. The contractors had to remedy the mold which had spread throughout the house and made the house unlivable. Given the mold had to be remedied, the Purchaser decided to do more extensive renovations than planned and this took longer than anticipated.

In response, Tenant S.M. submitted as follows. The Purchaser's position is inconsistent with their position on File 362 in which they stated they lived in the house as shown on page seven of the decision. The Tenants did not know the issue of mold was going to be raised; however, this issue was known to the prior landlord, J.C., because the Tenants raised it with them. The Purchaser has not submitted evidence to support their position such as communications with the contractors, evidence about the scope of the work or contract to remedy the mold or records about alternative accommodation.

Tenant A.N. submitted that the building permit for the rental unit never changed in scope which shows that the more extensive renovations were planned from the start.

E.M. testified that the rental unit is now for sale and the photos in the sales listing show the rental unit has undergone extensive renovations.

In reply, Legal Counsel acknowledged extensive renovations were done to the rental unit but again said the Purchaser chose to do these after it was discovered there was mold in the rental unit that had to be remedied.

The Purchaser submitted three photos of mold and a statement from M.C., the Purchaser's partner. The statement says the Purchaser and M.C. moved into the rental unit in mid-June of 2020. The statement says that contractors started their work in the rental unit in July of 2020 and discovered extensive mold. The statement says that, due to the need to remedy the mold, the Purchaser and M.C. decided to do more extensive renovations than originally planned. The statement says the Purchaser and M.C. moved out of the rental unit two or three weeks after moving in due to the mold, expanded scope of the renovations and dangerous nature of being in the rental unit with

the contractors. The statement says the Purchaser and M.C. have occupied the rental unit since November of 2020.

The Tenants submitted photos of the rental unit from May to November of 2020, a sales listing for the rental unit showing it has been completely re-done inside, a rental listing for the rental unit showing extensive renovations, photos of the rental unit at move-out and building permit documents regarding the rental unit.

Analysis

I find the Notice applied to the Tenants and E.M. despite only naming E.M. I find this because the Tenants and E.M. applied together in the Application for Dispute Resolution for File 965 and nobody raised the issue of them being tenants-in-common and not co-tenants. The prior landlord, J.C., and Purchaser were at the hearing on File 965 and should have raised this issue if they thought the Tenants and E.M. were tenants-in-common. More importantly, the prior landlord, J.C., and Purchaser should have raised an issue if they intended the Notice to only apply to E.M. and not the Tenants. The RTB issued an Order of Possession against E.M. and the Tenants based on the Notice and therefore ended the tenancies for E.M. and the Tenants based on the Notice. Again, the prior landlord, J.C., and Purchaser did not object to this or raise this as an issue.

I find it clear that the tenancies between the prior landlord, J.C., and the Tenants ended due to the Notice and resulting Order of Possession issued. Given this, the Tenants are entitled to seek compensation pursuant to section 51 of the *Act*. I again note that the Purchaser was present at, and provided testimony at, the hearing on File 965 which was about the validity of the Notice as it relates to E.M. and the Tenants. I find it disingenuous for Legal Counsel and the Purchaser to now argue that the Tenants were not served a Two Month Notice to End Tenancy for Landlord's Use of Property when the prior landlord, J.C., and Purchaser benefitted from the Notice being understood to apply to E.M. and the Tenants and neither took the position the Notice only applied to E.M.

The Notice was issued pursuant to section 49(5) of the *Act* which states:

(5) A landlord may 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...

Section 51 of the *Act* sets out compensation due to tenants whose tenancies end pursuant to a notice to end tenancy issued under section 49 of the *Act* and states:

(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.

(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.

Pursuant to section 51(2) of the *Act*, the Purchaser has the onus to prove they, or a close family member, occupied the rental unit within a reasonable period after the effective date of the Notice and did so for at least six months. The Purchaser also has the onus to prove extenuating circumstances. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I do not agree that it is open to the Purchaser to argue extenuating circumstances in this matter. The issue of what happened with the rental unit after the tenancies of E.M. and the Tenants ended was heard and decided on File 362. On File 362, the issue before me was whether E.M. was entitled to compensation pursuant to section 51 of the *Act* which necessarily included whether extenuating circumstances applied. The Purchaser did not argue that extenuating circumstances applied. It would not have made sense for the Purchaser to argue that extenuating circumstances applied because the Purchaser testified that they moved into the rental unit June 15, 2020, and occupied the entire house up to the hearing date of October 21, 2021. I do not accept that the Purchaser can now come to a new hearing, based on the same set of facts as File 362, and argue that extenuating circumstances applied.

Further, the Purchaser's argument about extenuating circumstances is based on a version of events that has already been rejected. The Purchaser has again claimed to have moved into the rental unit in June of 2020 but now says they moved out from August to November of 2020. I have already found that the Purchaser did not move into the rental unit until November of 2020 on File 362. I am not re-deciding this fact because whether the Purchaser moved into the rental unit in June or November of 2020 was heard and decided on File 362 and is *res judicata*.

Despite my view on the Purchaser not being permitted to re-argue facts found in File 362, I heard the parties on the issue of extenuating circumstances. Based on the evidence provided, I find that, even if I accepted that the Purchaser can now raise the issue of extenuating circumstances, the Purchaser has failed to prove extenuating circumstances for two main reasons.

First, I find the position of the Purchaser taken at this hearing contradicts the Purchaser's testimony at the hearing on File 362. On File 362, the Purchaser testified that they moved into the rental unit in June of 2020 and had occupied the entire house since which is contrary to their position now taken that they moved out of the rental unit from August to November. I do not accept that this contradiction is at all related to the Purchaser not being prepared for the hearing on File 362 or not being represented by

legal counsel. The issue of where the Purchaser and their family lived for four months is simple, straightforward and completely within the knowledge of the Purchaser. I find the Purchaser was either untruthful during the hearing on File 362 or is being untruthful now. Either way, I find I cannot rely on the Purchaser's version of events.

Second, I find the Purchaser has failed to provide sufficient evidence to support their version of events in relation to mold in the rental unit. I do not find any statements by the Purchaser, or by Legal Counsel on behalf of the Purchaser, about mold in the rental unit to be credible because I do not find the Purchaser to be credible.

I do not find the statement of M.C. to be compelling evidence to support the Purchaser's position about mold in the rental unit because it is not supported by compelling independent evidence, and I am not satisfied based on the information provided that M.C. is qualified to comment on the type, extent or impact of mold in the rental unit. M.C. submitted three photos of mold with their statement. The three photos are not compelling evidence of extensive mold in the rental unit such that the Purchaser and their family could not live in the rental unit. At best, the photos show three areas of mold; however, it may be that they only show two areas of mold with a close-up of one of the areas. The photos are taken in a way that does not show any perspective such that I can tell how extensive the mold is. I cannot tell from the photos what type of mold is present. I cannot tell from the photos the impact the mold might have on people living in the rental unit. I cannot tell from the photos what was required to remedy the mold.

If there was such extensive mold in the rental unit that the Purchaser and their family could not live in the rental unit, I would expect to see compelling independent evidence of this such as photos showing extensive mold, videos showing extensive mold, correspondence or statements from the contractors who allegedly found the mold as well as from those who remedied the mold or some similar evidence. The statement of M.C. coupled with three photos that do not show extensive mold in the rental unit is not sufficient to prove extenuating circumstances.

Given the above, I refer to the decision on File 362 and find it more likely than not that the Purchaser moved into the rental unit in November of 2020, six months after the effective date of the Notice. I do not find six months after the effective date of the Notice to be "within a reasonable period" because it is an extensive period and more than what a family would reasonably need to move into a house.

I do not accept that extenuating circumstances as set out in section 51(3) of the *Act* applied because the Purchaser did not raise this on File 362 and cannot now raise it. Further, even if I allowed the Purchaser to raise the issue of extenuating circumstances, the Purchaser has failed to provide compelling evidence that extenuating circumstances existed.

I find the Purchaser has failed to prove they accomplished the stated purpose of the Notice within a reasonable period after the effective date of the Notice and therefore the Purchaser must pay the Tenants 12 times their monthly rents pursuant to section 51(2) of the *Act*. I accept the Tenants' undisputed testimony that their rents were \$575.00 per month. I award the Tenants each \$6,900.00.

Given the Tenants have been successful in the Application, I award them each reimbursement for their \$100.00 filing fees pursuant to section 72(1) of the *Act*.

In total, the Tenants are each entitled to \$7,000.00 and I issue each of the Tenants a Monetary Order in this amount.

Conclusion

The Applications are granted. The Tenants are each entitled to \$7,000.00 and I issue each of the Tenants a Monetary Order in this amount. These Orders must be served on the Purchaser and, if the Purchaser does not comply with these Orders, they may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: September 14, 2022

Residential Tenancy Branch