



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on January 14, 2022 seeking compensation from the Purchaser. This is related to former Landlord's issuance of a Notice to End Tenancy for the landlord's Use of Property (the "Two-Month Notice"). issued on August 7, 2021. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Act* on August 25, 2022. In the conference call hearing, I explained the process and provided the attending party the opportunity to ask questions.

Both parties attended the conference call hearing. The Tenant presented how they sent notice of this hearing to each of the Purchaser, who was listed on the documents issued with the Two-Month Notice, as well as the Two-Month Notice. The Tenant sent this information on January 27, 2022. The Tenant's record of tracking information shows one package was delivered to one of the two Purchasers on January 31, 2022.

The Purchaser who attended the hearing confirmed they received the notice of this hearing.

Preliminary Matter – Tenant evidence to the Landlord

The Tenant sent evidence to the Landlord 3 days later (*i.e.*, the beginning of February) to the same address that they sent the notice to; however, this evidence was returned to them in the mail. This was to the address for the Purchaser's residential address, found through the land title office.

The Purchaser who attended the hearing stated they received no documents from the Tenant as evidence.

I find the Tenant undertook correct measures to serve their prepared evidence to the Purchaser. This is allowed via ordinary mail by s. 88(c), to the same address at which the Purchaser received the notice. Given that the Tenant proved via direct testimony their service of their evidence to the Landlord, I give full consideration to this evidence in the hearing.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the Two-Month Notice from the Purchaser, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided copies of pages from the tenancy agreement they had in place with their former Landlord and spoke to the relevant details in the hearing. The agreement started in March 2019, and the fixed-term tenancy continued on a month-to-month basis beyond the initial two-year fixed-term period. The Tenant moved out on September 15, 2021.

The Tenant paid \$2,000 per month in rent from the start of the agreement through to the end of the tenancy. This amount forms the basis for their claim for compensation.

The Tenant provided a copy of the Two-Month Notice issued by their former Landlord on August 7, 2021. This gave the move-out date of October 16, 2021. On page 2, the indication is that the conditions of a sale have been completed, and the Purchaser asks for service of the Two-Month Notice for their own occupancy of the rental unit. The Purchaser's name is complete on page 2 of the agreement, and the address is given as care of a realty firm.

The Tenant in their evidence provided the Purchaser's instruction to the former Landlord, using a realtor-association form created for that purpose, dated July 31, 2021. The address and name of the Purchaser on this form matches that provided on page 2 of the Two-Month Notice, care of the realty firm.

After the Tenant's move out from the rental unit on September 15, 2021, they observed renovations start "right after October 31." They had to make frequent trips past the rental unit, being close to a family members school. On November 25, they observed a 'for sale' sign on the lawn, and they knew that by February 3, 2022 the rental unit had sold. They observed renovations and knew with assurance that renovations were occurring because of the presence of workers inside the rental unit, with renovations completed by November 25.

The Tenant provided for sale listings from Google, all of which had pictures of the interior of the rental unit. They noted the rental unit looked "completely different" with new paint, the basement suite refinished, new flooring/carpets, and a new washer/dryer.

On their own, the Tenant sent a message to the property manager; however, they never received a response to this inquiry.

In their evidence, the Tenant provided the following documents:

- pictures, undated, showing the state of the rental unit when they lived there
- pictures, undated, showing the rental unit post-renovation
- online ads, undated, showing the rental unit for sale, indicating the address
- an image showing a for sale sign on the property
- a picture labelled January 15, 2022, showing the same sign with a 'sold' label across the front.

In the hearing, the Landlord described purchasing the property, but not actually living there. They stated: "no one lived in there". They indicated that the rental unit sold in "maybe February", and "maybe" their partner did some renovations in the rental unit. They sold the rental unit 3 or 4 months after they purchased it.

On their Application, the Tenant provided the total amount of their claim as \$24,000. This is based on 12 months of rent at \$2,000 per month.

Analysis

Under s. 49(5) of the *Act* a landlord may end a tenancy if a purchaser asks the landlord in writing to end the tenancy, in good faith, for their own occupancy of the rental unit.

A Tenant's compensation in these circumstances is governed by s. 51 which provides:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice 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, 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 . . . 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.

I find the Purchaser, as set out in s. 51, is the party who asked the former Landlord to end the tenancy. The evidence for this is the 'Buyers Notice to Seller for Vacant Possession' that is in the Tenant's evidence. This has the Purchaser's signature as "Buyer" on that document.

I find the Tenant provided sufficient evidence to establish that the Purchaser did not accomplish the stated purpose for ending the tenancy. That is, the Purchaser did not occupy the unit on their own as stated in the Two-Month Notice. I find the evidence shows the rental unit was advertised as available for sale, and the Tenant provided this was in November 2021. This is confirmed by the Purchaser who noted they sold the rental unit 3 or 4 months later.

Moreover, the instruction form to the former Landlord – the 'Buyers Notice to Seller for Vacant Possession' -- specifies the Purchaser's instruction that "The Buyer(s) . . . intend in good faith to occupy the Property."

I find this is clear evidence that the Purchaser did not use the unit for their own use as they so specified in the Two-Month Notice. There is no evidence the Purchaser took steps toward occupancy within a reasonable period of time. The online ads provided by the Tenant show active postings for the sale of the rental unit. One photo shows the unit as sold by January 2022. The Purchaser did not accomplish the stated reason for ending the tenancy. This is a breach of the *Act* governing the reason for the Purchaser ending the tenancy.

For these reasons, I find the Tenant has presented sufficient evidence to show they are entitled to compensation for a breach of the *Act* by the Purchaser. I grant the Tenant compensation in the amount specified by s. 51(2), the equivalent of twelve times the amount of the monthly rent of \$2,000. This is \$24,000.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the Tenant was successful in their claim, I find they are entitled to recover the \$100 filing fee from the Purchaser.

Conclusion

Pursuant to s. 51 and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$24,100.00. The Tenant is provided with this Order in the above terms, and they must serve it to the Purchaser as soon as possible. Should the Purchaser fail to comply with this Order, the Tenant may file the Order in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: September 2, 2022

Residential Tenancy Branch