



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Applicants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order for compensation pursuant to s. 51 equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- return of their filing fee pursuant to s. 72.

A.W. and P.W. appeared as the Applicants and former tenants. J.G. appeared as the Respondent and the purchaser.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Are the Applicants entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?
- 2) Are the Applicants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Applicants confirmed the following details with respect to their former tenancy:

- They moved into the rental unit on June 15, 2016.
- They move out of the rental unit on July 18, 2021.
- Rent of \$2,548.00 was due on the first day of each month at the end of the tenancy.

The Applicants provided a copy of the tenancy agreement, which indicates rent payable at the outset of the tenancy was in the amount of \$2,450.00. The Applicant A.W. advised that there were three rent increases during the tenancy, though confirm no notice of rent increase was put into evidence.

The Respondent indicated he is not able to confirm any of the details of the tenancy as they were unknown to him.

The Respondent advised that he and his partner, the other named respondent, purchased the residential property in question as a rental investment property. He advises they put an offer to purchase the property on June 13, 2021, which was accepted by the former landlord on the same day. The Respondent put into evidence a copy of the sale and purchase contract signed by the respondents and the former owner on June 13, 2021.

The Respondent testified to being unfamiliar with the *Act* or the obligations of landlords under the *Act* as he had never been a landlord. The purchase contract indicates as a term and condition that the “house should be vacant and ready to move in on possession day which is August 17, 2021”. The Respondent testified that he did not understand what this condition had meant and that he was relying upon the advice of his realtor.

The Respondent further testified to a level of chaos in his personal life when he purchased the residential property in the summer of 2021. He tells me that the crawlspace in his home was flooding and that it was a struggle to fix the problem, which

involved his backyard being dug up. The Respondent says that he and his family moved in with his mother when the work was being done, would return home, find that the issue had not been fixed, and vacate once more when the work was restarted. The Respondent further stated that he and his partner had a child at the end of June 2021, further adding to the challenges he was facing when the property was purchased.

In this context, the Respondent says he and the co-respondent signed a notice to the seller on June 23, 2021 asking for vacant possession of the rental unit. The Applicants provide in their evidence a copy of the buyer's notice signed by the respondents on June 23, 2021 but indicates it was executed on June 22, 2021. The Respondent emphasized that when he signed the buyer's notice, he had full intention to occupy the rental unit as his own home was periodically undergoing repair work.

The Respondent testified that he obtained advice from his realtor with respect to the consequences if he did not occupy the rental unit. He says he was told that there were none. The Respondent argued that he obtained improper advice from his realtor.

I am advised by the Applicants that they were told the property had been sold on June 17, 2021. The Applicants' evidence includes the following text message exchange with the listing agent from June 17, 2021:

Listing Agent: Hi [A.W.], house has been sold. They think the rent is to (sic) cheap and from what I'm hearing is that they would like to turn the basement into a separate suite with a separate entrance.

A.W.: OK, they would live upstairs? Or we could potentially still rent upstairs?

Listing Agent: It seems like they would like to rent the whole house. So you could potentially still live upstairs with a new agreement.

The Applicants advised that they had been in discussion with their former landlord about continuing to rent the property with the respondents and were willing to pay more rent to do so. The Applicants' evidence includes an email to the former property manager dated June 21, 2021 which states the following:

Further to our conversation today, we have been advised that the new owners plan to convert the house into two suites and rent it for more money. We would

like to discuss renting the property from the new owners. We are willing to pay a bit more money to stay.

Also, I just want to confirm I correctly understand what was discussed on the phone today. Please clarify if anything is misunderstood.

1. We will receive formal eviction which states we need to move out by August 31, 2021. The grounds for eviction is that the new owner provides a letter stating that he wants the property vacant on possession.
2. The new owner intends to move into the property so it is only two months' notice
3. Even if the owner plans to renovate and re-rent is, it is still two months' notice, not the 4 months that I had understood.
4. If he doesn't move in, we could challenge it for one year rent. You will look into this.

We look forward to hearing from you and as mentioned would like the opportunity to continue renting even if it is a higher cost within a reasonable amount.

The Applicants advise that they were told that the purchasers wanted vacant possession of the rental unit. Their written submissions indicate this occurred on June 22, 2022. The Applicants indicate they received a Two-Month Notice to End Tenancy signed on June 24, 2022 (the "Two-Month Notice"), a copy of which was put into evidence. The Two-Month Notice lists that the conditions for the sale had closed and that the purchaser asked for vacant possession and set an effective date of August 31, 2022. I was advised by the parties that the possession date of the sale was pushed back to September 15, 2021 after the buyer's notice had been issued to comply with the two-month notice requirement.

The Respondent confirmed that some renovation work was undertaken at the property, which included separating the space and creating two rental units, one upstairs and the other downstairs. The Respondent further testified that it was his intention through this period to occupy the space but that he and his family never did as the leak in his home had been repaired. The Respondent confirmed that the two rental units were tenanted beginning on November 1, 2021. The Applicants evidence includes advertisements with respect to renting the space.

The Respondent argued that the previous owners and the realtors are to blame with respect to the present matter. As mentioned above, the Respondent argued he obtained incorrect advice from his realtor. He further argued that the former landlords had given notice to the tenants to vacate prior to buyer's notice being signed and referenced the correspondence from the Applicants' evidence.

The Applicants confirmed that they received no other notice to end tenancy other than the Two-Month Notice.

Analysis

The Applicants seek compensation equivalent to 12 times the monthly rent payable under the tenancy agreement.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

In this case, the evidentiary burden rests with the respondent purchasers.

Policy Guideline #50, which provides guidance with respect to claims advanced under s. 51, states that once a notice is issued under s. 49 the purpose stated in the notice must be accomplished and cannot be substituted for another purpose even if the separate purpose would have been valid grounds for ending a tenancy under s. 49.

In this instance there is no dispute with respect to the relevant facts. The respondents purchased the property as per purchase contract signed on June 13, 2021. They were to take possession of the property on August 17, 2021, though this was extended to September 15, 2021 to comply with the two month notice requirement imposed by s. 49(2)(a) of the *Act*.

The Respondent acknowledges signing the buyer's notice with the co-respondent on June 23, 2021 and admits that he did so on the basis that he intended to occupy the space due to the repair work that was being undertaken periodically in the summer and

fall of 2021. The Two-Month Notice signed on June 24, 2021 indicates it was issued on the basis that the purchasers were to occupy the property. The effective date of the Two-Month Notice is listed as August 31, 2021. The Respondent admits that he never occupied the property and that it was rented out to new tenants beginning on November 1, 2021.

The Respondent argues that the previous landlords had de facto issued a notice to the Applicants prior to the buyer's notice being signed on June 23, 2021. There is no evidence to support that that is the case. Only one notice to end tenancy was ever issued, the one signed by the former landlord on June 24, 2022 and put into evidence by the Applicants. The Applicants specifically deny receiving another.

Further, informal discussions do not amount to a notice to end tenancy, which requires compliance with the *Act* and at a basic level must be in the proper form as per s. 52(e) of the *Act*. In other words, phone calls, emails, and text messages cannot be construed as proper notice to end tenancy from a landlord under the *Act*.

I would further add that I am not satisfied that the Applicants' correspondence supports notice was given outside the normal course of events. The chronology of events, as evidenced by the uncontradicted evidence, is clear:

- the purchase contract which asked for vacant possession was signed on June 13, 2021;
- the buyer's notice for vacant possession was signed on June 23, 2022; and
- the former landlord issued the Two-Month Notice, which was signed on June 24, 2022.

The Applicants' correspondence supports that the listing agent was inquiring on behalf of the Applicants on whether the tenancy could continue as per the text message exchange on June 17, 2021. In that same text message exchange, the listing agent informed the Applicants that the purchasers felt that rent was too cheap and that they planned on creating a separate basement suite. The Applicant A.W.'s email of June 21, 2021 to the former property manager supports that the Applicants were still attempting to salvage their tenancy mere days before the Two-Month Notice was issued.

All of this is to say that there is no evidence to support or suggest that the former landlord issued the Two-Month Notice without first obtaining a request from the respondent purchasers to do so. I place no weight in the Respondent's argument as it is directly contradicted by the evidence before me.

The Respondent further argues he obtained improper advice from his realtor. This may be true. I do not know and make no findings on whether this is the case. Even if it were true, however, it is not relevant. The Respondent essentially argues that he was ignorant of the law, relied on bad advice, and that it was someone else's fault for what has transpired. However, the respondents included a condition on their offer for vacant possession. The respondents signed the buyer's notice for vacant possession on June 23, 2022. The former landlord issued the Two-Month Notice upon receiving that request. The Applicant tenants vacated the rental unit as per the Two-Month Notice. The respondents' misapprehension of the *Act* does not absolve them from the consequences that flow from the breach, even if they had bad advice.

I have little difficulty in finding that the respondent purchasers have failed to establish that the purpose stated in the Two-Month Notice was fulfilled within a reasonable period and for at least 6 months. Indeed, the Respondent admits that the purpose, namely his occupation of the property, had not been fulfilled at all. The Respondent did not argue extenuating circumstances were present as per s. 51(3) of the *Act*, nor do I find that it could conceivably apply given the guidance set out under Policy Guideline #50.

In this instance, the tenancy agreement sets out that rent was payable in the amount of \$2,450.00 when the tenancy started in 2016. The Applicants testify that rent was increased three times during the tenancy and that \$2,548.00 was due each month at the end of the tenancy. I have no reason to disbelieve the Applicants undisputed testimony that rent was payable in the amount of \$2,548.00 at the end of the tenancy, which would have fallen below the allowable increases over the course of the tenancy. I accept the Applicant tenants undisputed evidence with respect to the rent payable at the end of the tenancy.

I find that the applicant tenants are entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement, which in this case is \$30,576.00 (\$2,548.00 x 12).

Conclusion

The Applicants are entitled to compensation from the Respondents under s. 51(2) of the *Act* equivalent to 12 times the rent payable under the tenancy, which in this case is \$30,576.00 (\$2,548.00 x 12).

The Applicants were successful in their application. I find they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Respondents pay the Applicants \$100.00 filing fee.

Taking the above amounts into account, I order that the Respondents pay **\$30,676.00** (\$30,576.00 + \$100.00) to the Applicants.

It is the Applicants obligation to serve the monetary order on both Respondents. If the Respondents do not comply with the monetary order, it may be filed by the Applicants with 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: October 14, 2022

Residential Tenancy Branch