



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 scheduled to deal with a tenant's claim for compensation payable where a landlord does not use the rental unit for the purpose stated on a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice").

Both the landlord and the tenant appeared for the hearing and were affirmed. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the tenant sent her proceeding package and evidence to the landlord via registered mail and the landlord received the materials.

I confirmed the landlord had not submitted or served any documentary evidence prior to the hearing and he intended to provide his position orally during the hearing.

The application was amended to remove the name of a second applicant who did not have standing as a tenant.

I explained the hearing process to the parties and gave the parties the opportunity to ask questions about the process.

During the hearing, it became apparent the landlord was prepared to take a position that the activities of the purchaser/new owner of the property are of no consequence to him; however, at issue was whether the landlord had received a written request from the purchaser to issue the 2 Month Notice to the tenant to bring the tenancy to an end so that purchaser, or close family member of the purchaser, may occupy the rental unit. The landlord indicated that he may have such a written request but that he would have to look for it and speak with his real estate agent and property manager. The landlord

indicated he would need a few days to accomplish this. I set a deadline of one week, or October 18, 2022, to submit a copy of the written request, if it exists, and I informed the parties that depending on what was submitted I may proceed to issue my decision or reconvene the hearing.

On October 17, 2022, the landlord provided a submission to me but there was no copy of a written request of the purchaser to the seller to end the tenancy so that the purchaser, or close family member of the purchaser, may occupy the rental unit. Rather, the landlord provided a written statement that:

“The purchasing realtor has been uncooperative as we believe that it was through that realtor that the purchasers signed their letter of intent to occupy the unit resulting in the need to proceed with the eviction notice. Both my realtor and my professional property management company are convinced, beyond doubt, that the purchasers had full intentions of having their family move into this unit.”

...
“From our research we have been unable to find the documentation needed for the eviction.”

In the absence of a written request from the purchaser, I find it unnecessary to reconvene the hearing and I proceed to issue a decision in this matter.

The landlord also provided copies of email exchanges between him and the tenant during the tenancy; however, those emails are irrelevant to the matter at hand for reasons provided in this decision and I find it unnecessary to reconvene the hearing to further examine the email evidence.

Issue(s) to be Decided

1. Is the tenant entitled to compensation against the landlord equivalent to 12 months of rent, as claimed, under section 51(2) of the Act?
2. Award of the filing fee.

Background and Evidence

The tenancy started on August 30, 2019. The monthly rent was \$1250.00 payable on the first day of every month.

On May 25, 2021 the landlord's property management company issued a Two Month Notice to End tenancy for Landlord's Use of Property ("2 Month Notice") to the tenant with an effective date of July 31, 2021.

The stated purpose for ending the tenancy, as stated on the 2 Month Notice was:



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.

The tenant accepted that the tenancy would end for the reason stated on the 2 Month Notice and vacated the rental unit on June 23, 2021.

After receiving the 2 Month Notice but while the tenant was still living in the rental unit she placed ads to sell some of her furniture. The purchaser of the rental unit contacted the tenant via electronic messaging to enquire if she was moving out of the rental unit. Several electronic messages were exchanged and, in summary, the purchaser asked the tenant to stay on as a tenant; however, the tenant had already secured new living accommodation and declined the offer. The tenant asked the purchaser if the purchaser was moving in to the rental unit to which the purchaser stated they purchased the property as a rental property and the seller just wanted a "clear turnover".

After the tenancy ended and the purchaser obtained title to the property the purchaser re-rented the unit.

The tenant seeks compensation from the landlord in the sum of 12 times the monthly rent, or \$15000.00, less \$1000.00 the landlord provided to the tenant during the Covid-19 pandemic, for a net claim of \$14,000.00.

The landlord submitted two emails received from the tenant. In April 2021 the tenant contacted the landlord to give the landlord a "heads up" that the tenant's daughter would be leaving and the rent was too expensive for one person so the tenant stated she could stay in the rental unit until it sells if the rent were reduced to \$800.00, otherwise she would have to look for new accommodation. The landlord did not provide a copy of the landlord's response. On May 25, 2022 the tenant emails the landlord to indicate she received the landlord's notice and she accepted it and would be able to vacate by June 30, 2021.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

A tenancy comes to an end in one of the ways provided under section 44 of the Act. Most commonly, a tenancy comes to an end when one of the parties gives a written notice to end tenancy to the other party. For the subject tenancy, there was a *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") issued to the tenant by the landlord on May 25, 2021, under section 49 of the Act.

The landlord provided a copy of an email written by the tenant in April 2021; however, I find the "heads up" does not amount to a tenant's notice to end tenancy and I remain of the position that the tenancy came to an end pursuant to the 2 Month Notice issued by the landlord.

Where a tenant receives 2 Month Notice under section 49 of the Act, the tenant is entitled to compensation as provided under section 51 of the Act. Since the tenant was served with a 2 Month Notice and the tenancy ended pursuant to the 2 Month Notice, I find the compensation provisions of section 51 of the Act are applicable.

By way of this application, the tenant is seeking the additional compensation payable under section 51(2) of the Act. Below, I have reproduced section 51(2) of the Act:

(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

(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.

Subsection (3) provides a mechanism for the Director, as delegated to an Arbitrator, to excuse the landlord from having to pay the compensation provided under section 51(2) if “extenuating circumstances” prevented the landlord from accomplishing the stated purpose within a reasonable amount of time after the tenancy ended or using the rental unit for the stated purpose for at least six months.

The spirit of the Act is to preserve existing tenancies and protect tenants from being evicted unnecessarily. As such, the Act provides very specific and limited circumstances when a landlord may end a tenancy. The Act also provides very serious consequences for landlords who state they are ending the tenancy for landlord’s use of property (by way of a 2 Month or 4 Month Notice) but then not fulfilling the stated purpose after the tenancy ends. The consequence for the landlord is the requirement to pay the tenant additional compensation under section 51(2) and it is a significant financial consequence intended create a real deterrence to issuing a 2 or 4 Month Notice for false reasons and/or ulterior motives.

Section 49(3) of the Act permits a landlord to end a tenancy so that the owner, or owner’s close family member, may occupy the rental unit themselves. There is a parallel provision under section 49(5) that allows issuance of a 2 Month Notice if the property is the subject of an unconditional sales contract and the purchaser, or close family member of the purchaser, intends to occupy the rental unit after title passes to the purchaser. This is the reason stated on the subject 2 Month Notice; however, I have been provided evidence that the purchaser re-rented the unit after the tenancy ended instead of occupying it themselves or by their close family member.

The landlord submitted that he and his agents understood the purchaser intended to occupy the rental unit and that he has no control over what the purchaser does with the property after title passes. The Act requires that the landlord receive a written request from the purchaser before issuing the 2 Month Notice to the tenant and a seller’s belief or understanding of the purchaser’s intention, in the absence of a written request from the purchaser, is insufficient to issue a 2 Month Notice. Although the landlord indicates he cannot obtain a written request from the purchaser’s “uncooperative” realtor, such a document should already have been provided to the landlord and the landlord did not provide any explanation as to why he does not already have a copy, or his realtor does not have a copy, if it existed. While I accept that the landlord has no control over what the purchaser does with the property after title passes, that is even more reason to obtain the purchaser’s written request for the landlord to issue the 2 Month Notice prior to issuing a 2 Month Notice, so that the liability for not occupying the rental unit transfers to the purchaser, as explained below.

The compensation provision of section 51(2) stipulates that the party responsible for paying the compensation to the tenant is the landlord, meaning the landlord at the time the 2 Month Notice was issued, and the only time this liability may be transferred to another party is where a purchaser had requested the landlord issue the 2 Month Notice. As explained above, the purchaser's request is to be in writing. The written request then clearly sets out the party liable for paying the additional compensation.

In this case, there is no dispute that the property was the subject of a sales contract when the landlord issued the 2 Month Notice to the tenant. In completing the subject 2 Month Notice to the tenant, the landlord put forth that the purchaser had asked the landlord, in writing, to give the 2 Month Notice to the tenant so that the purchaser or close family member may occupy the rental unit. However, there is no evidence before me that the purchaser had in fact asked the landlord, in writing, to issue the 2 Month Notice to the tenant. Therefore, I find the liability to pay the compensation under section 51(2) remains with the landlord and does not transfer to the purchaser.

The landlord did not present and I cannot think of any extraordinary circumstance that would excuse the landlord from paying the additional compensation to the tenant. I am of the view the landlord should not have issued the 2 Month Notice without the written request from the purchaser to do so and because he did the landlord remains liable for the additional compensation.

In light of the above, I find the tenant entitled to the additional compensation under section 51(2) from the named landlord and I grant the tenant's request for \$14000.00. I further award the tenant recovery of the \$100.00 filing fee paid for this application.

Provided to the tenant is a Monetary Order in the amount of \$14100.00 to serve and enforce upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) and enforced as an order of the court.

Conclusion

The tenant was successful in this application and is provided a Monetary Order against the landlord in the sum of \$14100.00.

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: November 10, 2022

Residential Tenancy Branch