



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: MNETC FFT

Introduction

The tenant seeks monetary relief pursuant to sections 51(2) and 72(1) of the *Residential Tenancy Act* (the “Act”).

A dispute resolution hearing was held by teleconference on December 5, 2022. Both the applicant and the respondent (hereinafter the “purchaser”) attended the hearing. The parties were affirmed before giving testimony. No service issues were raised.

Issues

1. Is the tenant entitled to monetary relief under section 51(2) of the Act?
2. Is the tenant entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began September 1, 2017 and ended March 31, 2022. Monthly rent was \$1,350.00. A copy of a written tenancy agreement was in evidence.

On or about January 27, 2022 the tenant’s landlord gave the tenant a *Two Month Notice to End Tenancy for Landlord’s Use of Property* (the “Notice”). A copy of the Notice is in evidence. On page two of the Notice the following box is checked, indicating the ground for ending the tenancy:

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.

Underneath this statement appears the purchaser's name and address. And attached to the four-page Notice was a copy of a "Contract of Purchase and Sale Amendment." The landlord (the seller) and the purchaser both signed the amendment. The effective date of the Notice is, it should be noted, March 31, 2022. This is when the tenancy ended.

The tenant testified that within a matter of hours after the tenancy ended, sometime after midnight on April 1, 2022, the purchaser listed the rental unit for rent. Multiple friends alerted the tenant to the listing and two screenshots of the listing were submitted into evidence. The rent amount for the rental unit was listed at \$1,800.00.

Because of having to vacate the rental unit, the tenant testified that she suffered a "huge hardship." As a single mother in a tough housing market, she was just "lucky to find a basement suite," albeit for higher rent.

On her commute to work—which took her by the rental unit—the tenant observed an RV parked in the driveway for about a month, and then a bunch of new cars in the driveway on and after May 1, 2022. The RV was intermittently back in the driveway.

The purchaser began his testimony by apologizing to the tenant. He had "absolutely no clue" when he received the *Notice of Dispute Resolution Proceeding* what had happened or why. He asked the realtor about the Notice and thought anything having to do with the Notice was for the landlord (the seller) to manage. The purchaser further testified that he was not given any information by his realtor about section 49 of the Act.

The purchaser testified that he had "genuinely no clue that this [that a tenancy would be ended] was the case." Nor did the purchaser have any intention to cause the tenant the stress she suffered. The purchaser reiterated that he had no intention to evict the tenant.

The purchaser further testified, however, that he did have intentions to move into the home. However, there was work to be done on the house as there were several issues. These included a natural gas leak. The purchaser lived for a short time in the RV that was parked while some work was done.

In any event, new tenants moved into the rental unit on May 1, 2022. The rent that they are paying does not, the purchaser noted, even cover the cost of the mortgage on the property.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim, except where, as is the case under section 51(2) of the Act, the onus is sometimes reversed.

Subsection 51(2) of the Act states that

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.

In this application, while the purchaser testified that it was his intention (at least at one point) to move into the rental unit, this never occurred. New tenants moved into the rental unit on May 1, 2022. They have been in the rental unit ever since. And despite the purchaser's argument that he had genuinely no clue what authorizing a section 49 notice to end a tenancy might entail (the realtor apparently never apprised him of the ramifications, nor did the realtor give the purchaser any of the paperwork), the purchaser and his immediately family never occupied the rental unit. This is, however, the reason for which the tenancy was ended, according to the Notice.

Taking into careful consideration all of the oral and documentary evidence before me, it is my finding that the purchaser has not established either (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the Notice or (b) that the rental unit was used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

The tenant has therefore proven a *prima facie* case for being entitled to an amount payable under section 51(2) of the Act. However, I must also consider whether the purchaser has a defense under subsection 51(3) of the Act.

Subsection 51(3) of the Act states that

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.

In this dispute, I do not find that the purchaser's ignorance as to the ramifications of asking the seller to issue a section 49 notice to be an extenuating circumstance. Nor do I find that the purchaser's perhaps negligent realtor's actions to be an extenuating circumstance. Indeed, there is no evidence whatsoever before me to find that there existed any extenuating circumstance that prevented the purchaser from either (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.

Therefore, having found that there are no extenuating circumstances that might excuse the purchaser from having to pay the amount required under subsection 51(2) of the Act it is my conclusion that the purchaser must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement. That amount is \$16,200.00.

As the tenant's application for monetary relief under section 51(2) of the Act was successful, the tenant is entitled to her additional claim for \$100.00 (to recover the cost of the filing fee) pursuant to section 72(1) of the Act. The respondent purchaser is also ordered to pay this amount to the applicant tenant.

Conclusion

For the reasons given above the application is hereby granted.

The purchaser is hereby ordered, pursuant to sections 51(2) and 72(1) of the Act, to pay \$16,300.00 to the applicant. A copy of a monetary order in this amount is issued with this decision to the applicant; the applicant must serve a copy of the monetary order upon the respondent.

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: December 6, 2022

Residential Tenancy Branch