



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for a monetary order that is the equivalent to 12 months rent, pursuant to section 51 of the Act.

The tenant's agent (agent), respondent, AKD, and another respondent, GD, attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Respondent AKD confirmed receiving the tenant's Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail and GD said they received the tenant's application from AKD. The agent confirmed they received the respondents' evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to a monetary order pursuant to section 51 of the Act and to recover the cost of the filing fee?

Background and Evidence

Although no written tenancy agreement was filed in evidence, the agent submitted that the tenancy began 18 years ago, when the tenant, who then owned the home, sold the home to their former landlord. According to the agent, the tenant then rented the home from their former landlord and they stayed there until receiving the 2 Month Notice. The agent testified that the monthly rent at the end of the tenancy was \$1,850.

The undisputed evidence is that the tenant's former landlord issued the tenant a 2 Month Notice for Landlord's Use of Property (Notice) as a condition of sale. Filed in evidence was a copy of the Notice.

The Notice was dated March 22, 2021, listing an effective move-out date of May 31, 2021, with the reason being that the "*conditions of 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 tenants accepted the Notice as they vacated fully by the end of April 2021.

Also filed in evidence was a copy of the written request signed by the respondent, AKD, which was on a standard form from the BC Real Estate Association. The document was titled, "TENANT OCCUPIED PROPERTY-BUYERS NOTICE TO SELLER FOR VACANT POSSESSION".

AKD, who was listed as the purchaser on the form, confirmed signing the written request on March 16, 2021, in which AKD requested the seller give notice to the tenant terminating the tenancy and requiring the tenants to vacate the property by June 1, 2021.

The undisputed evidence is that AKD never occupied the rental unit. In her written statement and testimony, AKD said she transferred her "Contract of Purchase of Agreement", due to "some personal circumstances for financing" to the respondent

here, GD, and two others, making them buyers of the property. AKD denied being responsible for the 2 Month Notice as she assigned the Contract of Purchase.

In response to my inquiry, AKD said she did not complete the purchase of the residential property because the appraisals turned out to be too low and three banks would not give her a mortgage. AKD confirmed financing was not a condition of the sale.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In the case before me, there is no dispute that AKD requested the former landlord, in writing, to issue a 2 Month Notice to the tenant. I find the Act does not allow the purchaser, AKD, to assign the 2 Month Notice to another purchaser. The former landlord issued the tenant a 2 Month Notice to evict the tenant at the request of AKD, the purchaser, not the subsequent party to whom the Contract was assigned. As a result, I find AKD to be liable in this matter. Further, I now exclude GD as a party to, and from any further consideration in, this dispute. The resulting monetary order, which will be explained below, will have GD's name excluded.

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

51 (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.

[emphasis added]

As the undisputed evidence is that the purchaser, AKD, never occupied the rental unit as she subsequently assigned the contract of purchase, I find AKD must pay the tenants the amount of \$22,200, the equivalent of 12 times the monthly rent of \$1,850.

Under section 51(3) of the Act, the purchaser who asked the landlord to give the notice may be excused from paying this amount if extenuating circumstances prevented the purchaser from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice.

Tenancy Policy Guideline 50E outlines circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

In these circumstances, I find AKD submitted insufficient evidence to show that the matters could not be anticipated or were outside AKD's control and as a result, I do not find that extenuating circumstances prevented AKD from occupying the rental unit.

I find the evidence shows that AKD failed to perform their due diligence in securing financing prior to entering into the contract for purchase, or even make financing a condition of sale, before asking that the tenant be evicted.

As a result, I grant the tenant a monetary award of \$22,300 as requested, which is the equivalent of monthly rent of \$1,850 for 12 months, or \$22,200, and \$100 for the cost of filing this application, which I grant as the tenant's application was successful.

I grant and issue the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$22,300.

Should AKD fail to pay the tenant this amount without delay, the tenant may serve the order on AKD for enforcement purposes. AKD is cautioned that costs of such enforcement are recoverable from AKD.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent of \$22,200 and recovery of the filing fee of \$100 is granted and they have been granted a monetary order for the amount of \$22,300.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 25, 2023

Residential Tenancy Branch