



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on April 14, 2022 seeking compensation for the Purchaser ending their tenancy, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 12, 2022.

Both the Tenant and the rental unit purchaser (hereinafter, the “Purchaser”) attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, both parties confirmed they received the prepared documentary evidence of the other. On this basis, the hearing proceeded.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”), 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 key details about the tenancy on their Application. They stated the tenancy started on October 1, 2009 and ended on January 31, 2022. As of the end of the tenancy they paid \$900 per month for rent, and this amount had not increased over the course of the tenancy.

The Purchaser, not ever having been in a landlord-tenant relationship with the Tenant here, did not provide additional details about this tenancy.

The Tenant described the following events surrounding the end of this tenancy:

- an agent for the Landlord started visiting in later 2021
- this agent issued the Two-Month Notice to End Tenancy for Landlord's Use (the "Two-Month Notice"), in line with the purchase of the property, on November 29, 2021, for the end-of-tenancy date of January 31, 2022.
- The Tenant received a copy of the purchaser's notice of their intention to move in to the rental unit, via email.
- They felt "a little uncomfortable" and did question the Landlord's agent, as well as the real estate agent, to discover that the party that intended to move into the rental unit was not the Landlord's family.

In a written submission, the Purchaser set out the following concerning their knowledge about the end of this tenancy:

- They wanted vacant possession of the rental unit when they made their offer for purchase, with no knowledge of this tenancy or its terms.
- The "[r]ealtors wanted [the Purchaser] to sign the notice to end tenancy after subject removal." They never individually signed the Two-Month Notice, with the understanding that the "seller is somehow related to the tenants and will be able to get us the vacant possession . . ." and they "clearly told the realtors we are not moving into the house so we cannot sign this notice."
- The Purchaser never signed the Two-Month Notice.
- The "Realtor's (especially seller's realtors) and sellers went ahead and gave notice to end the tenancy without getting written consent from us (buyers) without our approval."

The Purchaser reiterated that they never stated it was their intention to move into the rental unit. In their evidence, they provided an email conversation between the realtors "about wrongful misrepresentation and misleading the tenants." The Purchaser submits that this

conversation “clearly shows that we never wanted to move into the property and we never signed the notice to end tenancy.” In the hearing, the Landlord stated they never said they or their family was moving into the rental unit.

The emails provided by the Landlord contain the following dialogue, in chronological order:

- November 12: Purchaser’s agent notifies seller’s agent that “[the Purchaser wants] a clean and clear vacant possession of the property on or before the possession date, i.e., Feb 2nd, 2022.”
- November 12: the seller’s agent asked the former Landlord’s representative (*i.e.*, the person who signed and served the Two-Month Notice) for “vacant possession”
- November 30: The seller’s agent sent an email to the purchaser’s agent, to advise that they “should have the “Notice to End Tenancy Form filled out by the Buyer, in order to invoke the two months to vacant possession. That form would have to accompany the paperwork to be served on the tenants . . .”
- In the same message, the seller’s agent advised they would use the email of November 12th (*i.e.*, the topmost bullet above) “in leui [*sic*] of the required “Notice to End Tenancy Form” – and “The Seller will consider this to comply with what the Seller would like to be given to the Tenants.” Also: “shewill use the November 12, 2021 letter and hope it works.”

The Purchaser also provided a copy of the purchase/sale contract that shows, on page 3, the indication that the Purchaser wanted vacant possession for February 2, 2022. This bears the purchaser’s signature on October 25, 2021.

The Purchaser also provided a copy of the document ‘Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession’. This bears the Purchaser’s printed name, is addressed to the Sellers (*i.e.*, the former Landlord here). This document is unsigned, and was not served together or attached to the Two-Month Notice.

In the hearing, the Purchaser stated that they were very clear they were themselves not moving in to the rental unit. They blame their real estate agent, because this agent knew and was aware that they needed a signed form. Instead of attaching and using the ‘Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession’, they instead used a copy of the November 12, 2021 5:53pm email. The Purchaser asserted that all agents involved in the sale were aware of the need to use the ‘Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession’ form for that purpose.

The Tenant presented that they discovered the rental unit advertised to lease, online on March 7th. They provided copies of these ads in their evidence. This includes images of the empty rental unit, setting the rent amount at \$2,000. They did notice from the images that cosmetic changes were undertaken, such as floor replacement and a new kitchen arrangement.

The Tenant in the hearing stated that, from the emails the Landlord presented, it was “very clear that the new buyer wanted the rental unit vacant.” They also noted the increased rent amount as indicative of the new Purchaser wanting to have a rent in place that was approximate to the market value of the rental unit. Also, they described it as “odd” where the Purchaser would hire an agent but not know about the transaction concerning this tenancy.

Analysis

The *Act* s. 49 allows for a purchaser to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in the situation where a landlord issues a Two-Month Notice. This is covered in s. 51:

- (2) Subject to subsection (3) . . . must pay the tenant . . . 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 of 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.
- (3) The director may excuse . . . 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 purchaser, as applicable, from
 - (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.

The onus is on the Purchaser to prove that they accomplished the purpose for ending the tenancy. They may only be excused from these requirements in extenuating circumstances.

In this present scenario, I find the Purchaser had no reservations about stating they or their own family never had any intention on occupying the rental unit on their own. I find as fact they did not occupy the rental unit, in contrast to what was provided on the Two-Month Notice.

I also establish as fact that the Purchaser proceeded to advertise the rental unit in order to take on new tenants. The Purchaser did not deny that this was the case; again, it was never their intention to occupy the rental unit.

With these two facts, I find the Purchaser, via s. 51(2) set out above, must pay the Tenant an amount equal to 12 times the monthly rent.

The next question to resolve is whether extenuating circumstances. The onus to establish this is again on the Purchaser.

The *Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy* – that which gives a statement of the policy intent of the legislation – provides that extenuating circumstances are those “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.”

I find the terms of the purchase of the rental unit property were *not* outside the Purchaser’s control. Though the Purchaser signed the purchase and sale agreement on October 25, 2021, they do not appear to be a party to other communications after that point. This is an element of trust, and a legal matter of representation and agency with the real estate agent involved. In the hearing, the Purchaser loosely described this as a power dynamic; however, I find they entrusted all terms of the sale to the real estate agent, and that was the Purchaser’s choice to do so. This is either a situation where the real estate agents were not forthcoming about an existing tenancy at the rental unit, or were acting to cover up an omission on their part, which would be the inclusion of the document ‘Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession’. It appears from the messages provided by the Landlord that the agent was cognizant of an omission after they arranged with the previous Landlord to serve the Two-Month Notice, on November 30, the following day.

I conclude the Purchaser was not fully focused on all terms of the sale with respect to the then-current tenancy. At the same time, I note they signed the contract of purchase and sale, initialing beside paragraph 5 that there would be vacant possession on February 2, 2022. In this situation, I find the Purchaser is ultimately responsible for the actions of their agent, who appeared to cover up their error after the fact.

For these reasons, I find the Purchaser has not overcome the burden of proof to show that extenuating circumstances prevented them from accomplishing the purpose/using the rental unit as was indicated on the Two-Month Notice. They had the matter of the rental unit

purchase attended to by proxy; I find they are accountable for the actions of that agent made on their behalf on matters that were *not* outside their control.

I find this is a situation where s. 51(2) applies. The Purchaser is not excused where they have not overcome the burden of proof to show that there were extenuating circumstances outside of their own control. For this, the Purchaser must pay the equivalent of 12 times the monthly rent payable under the tenancy agreement. This is the amount of \$10,800 as claimed by the Tenant.

Because the Tenant was successful in their Application, I grant the full amount of the \$100 Application filing fee to them.

Conclusion

Pursuant to s. 51 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$10,900. 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: January 11, 2023

Residential Tenancy Branch