



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation related to a Notice to End Tenancy for Landlord's Use of Property pursuant to section 51;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenant's application and respective evidence submissions on file.

At the outset of the hearing, the tenants withdrew their claim relating to reimbursement of six days rent for vacating early.

Issues

Are the tenants entitled to a monetary order for compensation relating to a Notice to End Tenancy for Landlord's Use of Property?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background & Evidence

This tenancy for this house began on October 1, 2016. The monthly rent prior to the end of the tenancy was \$1998.00.

On February 24, 2022, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49 of the Act, with an effective date of May 1, 2022. The notice was issued on the grounds that the landlord or a close family member of the landlord intends to occupy the rental unit.

The tenants vacated the rental unit on April 24, 2022, six days prior to the effective date of the Notice.

The tenants are claiming an amount equivalent of twelve times the monthly rent as compensation due to the landlords not using the rental property for their own use after issuing the Two Month Notice.

In support of their claim the tenants submitted advertisements of the property listed for sale in May 2022 and screenshots from a real estate app showing the property sold on July 7, 2022.

The landlord C.R. testified that she had a good faith intention to occupy the house herself but could not as there were numerous repairs required. C.R. submits that the repairs only came to light after taking possession of the unit from the tenants and were not anticipated. C.R. testified that she was forced to sell the property as she could not afford the repairs.

The landlord D.R. testified that he and C.R. separated in January 2022. D.R. submits that he played no role in listing the property for sale and that he was no longer an owner when it was listed. D.R. submits that he transferred ownership to C.R. on May 15, 2022. D.R. further submits there is no evidence that the tenants suffered a financial loss from having to vacate.

Analysis

Section 51 (2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement. The onus is on the landlord to establish that the stated purpose for ending the tenancy was accomplished.

Pursuant to section 51(3), 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 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.

There was no dispute that the landlord did not accomplish the stated purpose for ending the tenancy after the effective date of the Two Month Notice. I find the argument put forward by the landlords as to why they were not able to accomplish the stated purpose for ending the tenancy are not extenuating circumstances. It is the landlord's house and as such the landlord ought to have known the condition of the house prior to issuing a Two Month Notice to the tenants. With some basic due diligence this could have been prevented.

I dismiss the submissions of the landlord D.R. that he should not be liable as he was not involved in listing the property and that he had transferred ownership to C.R. D.R. was a landlord at the time the Two Month Notice was issued; therefore, he shared an equal duty to ensure the rental unit was used for the stated purpose as per the Two Month Notice. D.R. did not submit any documentary evidence supporting the transfer of ownership. Additionally, D.R.'s submission that the tenants suffered no loss is irrelevant as financial loss is not a precondition required under the penalty provision of section 51 of the Act.

I allow the tenants claim and award an amount of \$24,076.00, which is twelve times the monthly rent of \$1998.00 plus the \$100.00 filing fee.

Conclusion

Pursuant to section 51 of the *Act*, I grant the tenants a Monetary Order in the amount of \$24,076.00. Should the landlord fail to comply with this Order, this Order may be filed in 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: January 31, 2023

Residential Tenancy Branch