



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

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

- a Monetary Order for compensation from the respondent related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the respondent, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Both parties agree that the tenant served the respondent with this application for dispute resolution and evidence via registered mail. I find that the respondent was served with the above document in accordance with sections 88 and 89 of the *Act*. No issues with the timing of service were raised in the hearing.

The respondent testified that he served the tenant with his evidence, which consisted of a single page, on February 16, 2023 via registered mail. The tenant testified that he received the above evidence less than 14 days before this hearing but that he had time to review the respondent's evidence. I accept respondent's testimony that the evidence was served on the tenant via registered mail on February 16, 2023. I find that the tenant was deemed served with it on February 21, 2023, five days after its registered mailing, and six clear days before this hearing.

Pursuant to Residential Tenancy Branch Rule of Procedure 3.15 the respondent was required to serve the tenant with the respondent's evidence 7 clear days before this hearing. While the respondent's evidence was served one day late, I find that the tenant is not prejudiced by the inclusion of the respondent's evidence as the tenant had time to review it. I also note that the respondent's evidence was also included in the tenant's evidence. I find that the respondent's evidence was served in accordance with section 88 of the *Act* and is accepted for consideration.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for compensation from the respondent related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
2. Is the tenant entitled to authorization to recover the filing fee for this application from the respondent, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and respondent's claims and my findings are set out below.

The tenant provided the following undisputed testimony. This tenancy began on February 1, 1980 and ended a few days after March 31, 2021 by way of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). Monthly rent in the amount of \$1,150.00 was payable on the first day of each month.

The tenant testified that on November 23, 2020 he was personally served by the seller of the subject rental property (MR) with the Notice and a document titled "Tenant Occupied Property - Buyer's Notice to Seller for Vacant Possession". The tenant entered into evidence page two of the Notice and the "Tenant Occupied Property - Buyer's Notice to Seller for Vacant Possession". The tenant testified that MR told him that she was serving the Notice because the respondent was buying the subject rental property and was going to live in it.

The tenant testified that the first page of the Notice listed MR as the landlord, himself as the tenant and stated that he was required to vacate the subject rental property by 1:00 p.m. on March 31, 2021. Page two of the Notice states that the reason for this Two Month's Notice to End Tenancy is that:

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.

Page two of the Notice lists the respondent as the purchaser and provides an address for the respondent. The Notice states that the tenant was served with the Notice on November 23, 2020.

The "Tenant Occupied Property - Buyer's Notice to Seller for Vacant Possession" lists MR as the seller and states:

WHEREAS:

- A. The undersigned (the "Buyer(s)") and the Seller(s) have entered into the Contract of Purchase and Sale dated Oct 26, 20 in respect of the purchase and sale of the above-noted Property (the "Purchase Agreement").
- B. All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied or waived in accordance with the Purchase Agreement.
- C. The Property is currently rented to tenant(s).
- D. The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined in the *Residential Tenancy Act*), voting shareholders of the Buyer(s)) intend in good faith to occupy the Property.

NOW THEREFORE in accordance with Section 49 of the *Residential Tenancy Act*, the Buyer(s) hereby request that the Seller(s), as landlord, give notice (the "Tenant Notice") to the tenant(s) of the Property pursuant to the *Residential Tenancy Act* terminating the tenancy and requiring the tenant(s) to vacate the Property by 1:00 pm on March 31st, 2021.

For the purpose of giving the Tenant Notice under Section 49 of the *Residential Tenancy Act*, the Buyer(s) address is: [same address stated on the Notice for the respondent] and the Buyer(s) hereby consent to the Seller(s) including the Buyer(s) name(s) and such address on the Tenant Notice for the purpose of Section 49(7) of the *Residential Tenancy Act*.

Executed by the Buyer(s) this 17th day of November, 2020.

Buyer: [respondent's signature]
Print Name: [S.P.I.]

S.P.I. is an incorporated company name which is located in full on the cover page of this Decision.

The tenant testified that he moved out a few days after the effective date of the Notice as MR gave him a few extra days because he was otherwise homeless. The tenant testified that the respondent did not move into the subject rental property and that it was demolished and a new home is currently being built.

The tenant entered into evidence listings for the subject rental property which show that it was sold on October 26, 2020 for \$1,250,000.00 and was sold again on February 17, 2021 for \$1,433,000.00.

The tenant entered into evidence the following permits for the subject rental property:

Type of Permit	Date of Application	Date of Issue
Temporary Street Occupancy	June 1, 2022	June 6, 2022
Street Use	Sep 22, 2021	Mar 17, 2022
Sewer and Water Connection	Sep, 21, 2021	June 13, 2022
Electrical	May 26, 2022	May 26, 2022
Building – Salvage and Abatement	Mar 15, 2022	Jun 13, 2022
Building- Demolition	March 15, 2022	"In Review"

The tenant entered into evidence an email from AR which states that she is a neighbour of the subject rental property and that to her knowledge, no-one has been living at the subject rental property. The email is dated Friday June 24.

The tenant entered into evidence a signed statement from AD dated June 23, 2022 which states:

The purpose of this letter is to provide information regarding the residency of the dwelling at [the subject rental property].

I reside at [address redacted for privacy], two houses west of [the subject rental property]. From the period of April 2021 to present day, I have not seen any evidence that any individual resided at the house located at [address of subject rental property].

The tenant testified that his current rent is \$2,150.00 per month and he is seeking 12 months rent at the above rental rate for a total of \$25,800.00.

The respondent testified that the tenant has named the wrong party because he was never the landlord or owner of the subject rental property and neither was incorporated company named in the "Tenant Occupied Property - Buyer's Notice to Seller for Vacant Possession".

The respondent testified that at the time he signed the "Tenant Occupied Property - Buyer's Notice to Seller for Vacant Possession" he was an agent for the incorporated company and had signing authority for said company.

The respondent testified that he assumed the "Tenant Occupied Property - Buyer's Notice to Seller for Vacant Possession" was served on the seller MR, but he did not personally serve it. The respondent testified that the sale of the subject rental property between MR and the incorporated company did not complete as there was an issue with the slope of the property. The respondent testified that he did not know if the sale of the property fell apart before or after the conditions of sale were satisfied or waived but that the sale collapsed in early 2021. The respondent testified that he assumed the property was re-listed after that point.

The respondent testified that the incorporated company is a private development company and not a family corporation. The respondent testified that one of the

shareholders for the incorporated company planned on moving into the subject rental property.

Analysis

Based on the “Tenant Occupied Property - Buyer’s Notice to Seller for Vacant Possession” entered into evidence by both parties, I find that the respondent, as agent for the purchaser, asked the landlord to give the Notice to the tenant. Based on the tenant’s undisputed testimony, I find that the tenant was served with the “Tenant Occupied Property - Buyer’s Notice to Seller for Vacant Possession” and the Notice on November 23, 2020. As the tenant was served with the “Tenant Occupied Property - Buyer’s Notice to Seller for Vacant Possession” by MR, I find that “Tenant Occupied Property - Buyer’s Notice to Seller for Vacant Possession” was served on MR.

I accept the tenant’s undisputed testimony that the Notice had an effective date of March 31, 2021.

Section 51(2) of the *Act* states:

(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 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.

The respondent testified that the sale of the subject rental property from MR to the incorporated company did not go through and the shareholder of the incorporated company did not move in. Based on the above testimony, I find that the stated purpose for ending the tenancy on the Notice was not accomplished within a reasonable period after the effective date of the Notice and the rental unit was not used for the stated purpose for at least 6 months’ duration. Pursuant to my above findings, I find that the

respondent, who signed the “Tenant Occupied Property - Buyer’s Notice to Seller for Vacant Possession” and thereby asked MR to give the Notice, must pay the tenant 12 times the monthly rent payable under the tenancy agreement of the subject rental property. I award the tenant a Monetary Order in the amount of $\$1,150.00 \times 12 = \mathbf{\$13,800.00}$. I note that section 51 of the *Act* grants 12 months rent at the rental rate of the tenancy that was ended by way of the Notice, not 12 months rent at the tenant’s subsequent rental rate.

I find that not properly investigating the slope of the subject rental property before asking the landlord to serve the “Tenant Occupied Property - Buyer’s Notice to Seller for Vacant Possession” on the tenant is not an extenuating circumstance under section 51(3) of the *Act*. I find that such investigations should have taken place before the “Tenant Occupied Property - Buyer’s Notice to Seller for Vacant Possession” was served.

I find that the tenant was permitted to name the agent of the incorporated company (the purchaser) and not the incorporated company itself because the purpose of the s. 51 penalties is to deter the eviction of tenants who do not need to be evicted. Having agent’s of purchaser’s play a role in achieving this and being deterred from turning a blind eye to wrongful evictions is not inconsistent with this purpose.

I note that the definition of landlord in section 1 of the *Act* includes an agent of the landlord which meets the objective of ensuring remedies for tenants are not overly difficult to obtain or can be unfairly ousted. I find that the same reasoning applies in these circumstances and that the definition of purchaser includes the purchaser’s agent. I find that the respondent was properly named in this application for dispute resolution.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the filing fee in the amount of \$100.00 from the respondent.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$13,900.00.

The tenant is provided with this Order in the above terms and the respondent must be served with this Order as soon as possible. Should the respondent 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: February 28, 2023

Residential Tenancy Branch