



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNETC, FFT**

Introduction

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

- a monetary order for \$25,800 representing 12 times the amount of monthly rent, pursuant to sections 51(2) and 65 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:46 pm in order to enable him to call into the hearing scheduled to start at 1:30 pm. Tenant PE and an advocate ("**KE**") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, and to make submissions. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that PE, KE, and I were the only ones who had called into the hearing.

PE testified that he served the landlord with the notice of dispute resolution package and supporting documentary evidence via registered mail on June 18, 2022. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. He sent the documents to the address specified on a two month notice to end tenancy for landlord's use of the property (the "**Notice**"). The Notice was completed by the former owner of the rental unit at the request of the landlord, who had just purchased it. The landlord gave the former owner a "Buyers Notice to Seller for Vacant Possession" which listed his service address for the purpose of the Notice as a realty corporation ("**PRC**"). KE stated that the address listed on the Notice is the address for PRC.

As such, I find that the tenants served the landlord with the documents in accordance with the Act. Per section 90 of the Act, the landlord is deemed to have received them on June 23, 2022, five days after they went sent.

Issues to be Decided

Are the tenants entitled to:

- 1) an order cancelling the Notice;

- 2) a monetary order of \$25,800; and
- 3) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenants and the prior owner of the rental unit entered into a written, fixed term tenancy agreement starting May 1, 2021. Monthly rent is \$2,100. The tenants paid the prior owner a security deposit of \$1,050, which has since been returned to them. The tenants vacated the rental unit on May 22, 2022.

On March 22, 2022, the prior owner of the rental unit served the tenants with the Notice. It specified an effective date of May 22, 2022. It listed the reason for issuing the Notice as:

All 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 close family member intends in good faith to occupy the rental unit.

Attached to the notice was a copy of the "Buyers Notice to Seller for Vacant Possession" which indicated that the prior owner of the rental unit and the landlord entered into a Contract of Purchase and Sale on March 20, 2022 and that the landlord required vacant possession of the property on May 31, 2022 as the buyer or close family member intended in good faith to occupy the rental unit.

PE testified that prior to moving out of the rental unit, the landlord asked the tenants if a professional photographer could come to the rental unit and take photographs. The tenants agreed.

The tenants then began looking for a new home. In the course of their search, they came across an online posting which listed the rental unit for re-rent. This posting used the photographs that the professional photographer had taken of the rental unit. The posting listed the monthly rent as \$2,600.

In early May 2022, the tenants asked a friend of theirs to pose as a perspective renter for the rental unit. This friend contacted the landlord (or someone with the same surname as the landlord) asked if he could rent the unit, and engaged in a protracted discussion about renting it. Ultimately, the landlord advised him that the rental unit had been rented to someone else.

The tenants submitted screenshots of the exchange between their friend and the landlord, as well as screenshots of the online listing.

The tenants also submitted a copy of a “Form K – Notice of Tenants Responsibilities” for the rental unit dated June 17, 2022, which listed somebody who does not share a surname with the landlord as a tenant.

Analysis

Section 51(2) of the Act states:

Tenant's compensation: section 49 notice

(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.

Section 51(2) of the Act places the evidentiary burden on the landlord to prove the property was used for the stated purpose. The landlord has failed to attend the hearing, and as such cannot be said to have discharged his onus. This in and of itself would cause the landlord to be unsuccessful.

However, even if the tenants bore the evidentiary burden, I would still have found that the landlord did not use the rental unit for the stated purpose. Based on the screenshots of the listing and the conversation between the landlord and the tenant's friend, I find that the landlord or a close family member of his did not move into the rental unit within a reasonable period of time after the effective date of the Notice, or at all.

I accept that the landlord instead re-rented the rental unit to an arm's length individual. I reach this conclusion based on the conversation entered into evidence and on the Form K. The difference in surnames between the individual listed on the Form K and the landlord is not determinative as to whether these individuals are close family members. However, the existence of a Form K indicates that the rental unit was rented to someone, which would be unlikely if the occupant was a family member. Coupled with the fact that the landlord posted the rental unit for rent, and indicated to the tenant's friend that it had been rented, I find that it is more likely that not that the landlord rented the rental unit to an arm's-length individual after the effective date of the Notice.

I do not find it likely that extenuating circumstances existed which would have prevented the landlord or a close family member from moving into the rental unit, as the documentary evidence shows that the landlord had re-rented the rental unit prior to the effective date of the tenancy. If such extenuating circumstances existed, I cannot see why the landlord would not have withdrawn the Notice or offered to continue the tenants' tenancy.

As such, I find that the tenants are entitled to an amount equal to 12 times the monthly rent. Based on the tenancy agreement submitted into evidence, I find that their monthly rent was \$2,150. Accordingly, I order that the landlord pay the tenants \$25,800 (12 x \$2,150).

Pursuant to section 72(1) of the Act, as the tenants have been successful in the application, they may recover the filing fee from the landlord.

Conclusion

Pursuant to sections 51, 65 and 72 of the Act, I order that the landlord pay the tenants \$25,600, representing the return of the filing fee plus an amount equal to 12 times their monthly rent.

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 16, 2023

Residential Tenancy Branch