



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenant CE (the tenant) and respondent PM (the respondent) All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

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 \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order in an amount equivalent to twelve times the monthly rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties and witnesses, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered."

Both parties agreed the tenant rented a trailer parked on the residential property, which has three houses and the trailer. The respondent purchased the property and received possession on November 01, 2021.

The tenant affirmed the tenancy started on October 01, 2020 and ended on November 01, 2021. Monthly rent when the tenancy ended was \$640.00, including electricity, due on the first day of the month. The tenant submitted the tenancy agreement into evidence.

The respondent stated she does not know the tenancy details, as when she received possession the tenant vacated the rental unit.

Both parties agreed the seller served a 2 month notice to end tenancy (the Notice) and the tenant received it on August 31, 2021. The tenant submitted the Notice into evidence. It states that the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to serve the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The effective date was October 31, 2021.

The respondent testified the seller removed the trailer from the property on November 04, 2021, as it was not part of the sale. The respondent parked her own trailer on the same site where the previous trailer was parked on November 04, 2021.

The respondent said that she lived in her trailer from November 04, 2021 to mid-June 2022. The respondent submitted a photograph dated November 06, 2021 showing the respondent's trailer parked on the site where the previous trailer was parked.

The respondent submitted into evidence a letter signed by the seller's representative on June 27, 2022:

6. Until the Closing Date, a recreational vehicle was situated on the Property and rented to [the tenant] who had been timely served with a Two-Month Notice to End Tenancy for Landlord's Use of Property. [the tenant] vacated the recreational vehicle on the Closing Date;
7. The recreational vehicle that was rented to the tenant was tangible property owned by [the seller] and not included in the contract of purchase and sale. The recreational vehicle was situated adjacent to Cabin B and connected to Cabin B's electrical power, water, and septic services;
8. As Executor, I arranged for removal of the recreational vehicle from the Property on November 1, 2021 and moved it to a temporary location to be remediated. The recreational vehicle was sold on November 8, 2021 and the proceeds deposited to the Estate;

The respondent submitted into evidence a letter signed by her real estate agent on July 13, 2022:

The seller of the property retained ownership of the RV and it was supposed to be removed prior to the completion of the sale and the possession date of November 1st, 2021.

Unfortunately the Seller passed away before the Completion and Possession dates. The Sellers estate did take over his legal affairs but were unable to remove the RV before the possession date. They did remove it a few days after possession on November 5th, 2021. We are unaware of any oral or written agreements with the tenant that was in the RV and the previous owner, as we had no involvement with the RV in any manner.

The tenant affirmed that it is not fair that buyers can terminate affordable tenancies.

Analysis

The Act defines rental unit as "living accommodation rented or intended to be rented to a tenant".

Residential Tenancy Branch (RTB) Policy Guideline 9 states:

Tenancy agreement is defined in the Residential Tenancy Act (RTA) as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting

possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Tenancy agreement is defined in the Manufactured Home Park Tenancy Act (MHPTA), as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities. It does not include a licence to occupy.

Based on the undisputed testimony and the letter dated June 27, 2022, I find the rental unit was the recreational vehicle owned by the seller and the site where the recreational vehicle was parked.

Based on the undisputed testimony, I find the tenancy was under the Act.

Sections 49(2) and (5) of the Act state:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 51(2) of the Act provides that the purchaser, in addition to the amount payable under subsection (1), must pay an amount that is 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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Per section 51(2) of the Act and Rule of Procedure 6.6, the respondent has the onus to prove, on a balance of probabilities, that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the Notice and that the respondent occupied the rental unit for at least 6 months after the effective date of the Notice.

Based on the respondent's uncontested and convincing testimony, I find the respondent parked her recreational vehicle on November 04, 2021 on the same site where the recreational vehicle occupied by the tenant was parked and lived on the same site from November 04, 2021 to mid-June 2022.

I note the respondent did not live in the same recreational vehicle rented by the tenant. However, the rental unit was the recreational vehicle and the site where the recreational vehicle was parked and the respondent proved that she occupied the site, which is part of the rental unit, for more than six months after the Notice's effective date.

The Act does not require the landlord or the purchaser to occupy the same recreational vehicle occupied by the tenant. Furthermore, it was not possible for the respondent to occupy the same recreational vehicle, as it was not part of the sale and the rental unit's seller removed it from the property.

As the respondent received possession on November 01, 2021 and moved to the site on November 04, 2021, I find the respondent moved within a reasonable period of time after the Notice's effective date.

Considering the above, the tenant is not entitled to a monetary order under section 51(2) of the Act.

As the tenant was unsuccessful, the tenant must bear the cost of the filing fee.

Conclusion

I dismiss the tenant's application without leave to reapply.

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 17, 2023

Residential Tenancy Branch