



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the Tenants' application under the Residential Tenancy Act (the "Act") for:

- compensation due to the Landlords (the "Purchasers") having ended the tenancy and not complied with the Act or used the rental unit for the stated purpose pursuant to section 51; and
- authorization to recover the filing fee for this application from the Purchasers pursuant to section 72.

One of the Purchasers, DD, and two of the Tenants, TM and MW, attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Purchasers were represented by legal counsel JB. The Tenants were represented by advocate KC.

The parties were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Removal of Respondent

This application initially listed a third respondent, Holywell Properties as agent for PB. PB is the former owner of the rental unit. PB and AM, agent for Holywell Properties, attended the beginning portion of this hearing to clarify their involvement. PB was represented by legal counsel AS.

The parties agreed that the Tenants would only proceed with this application against the Purchasers. By consent and pursuant to section 64(3)(c) of the Act, I have amended this application to include only the Purchasers as respondents.

Preliminary Matter – Service of Dispute Resolution Documents

DD and JB confirmed the Purchasers' receipt of the Tenants' notice of dispute resolution proceeding package ("NDRP Package") and documentary evidence. I find the Purchasers were served with the NDRP Package and the Tenants' documentary evidence in accordance with sections 88 and 89 of the Act.

KC confirmed the Tenants' receipt of the Purchasers' documentary evidence. I find the Tenants were served with the Purchasers' evidence in accordance with section 88 of the Act.

The Tenants submitted a condition inspection report as additional documentary evidence on February 15, 2023, which the Purchasers disputed as late. Under Rule 3.14 of the Rules of Procedure, documentary evidence that is intended to be relied on by the applicant at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. I find this document was not served on the Purchasers in accordance with the Rules of Procedure. I also find that this document would have been available to the Tenants at the time that they served their original evidence on the Purchasers. As such, I directed the Tenants to speak to the contents of this document for the purposes of this application.

Issues to be Decided

1. Are the Tenants entitled to compensation under section 51(2) of the Act?
2. Are the Tenants entitled to reimbursement the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on November 15, 2018 with the former landlord, Holywell Properties as agent for PB. Rent was \$2,400.00 per month. The tenancy ended on January 31, 2022.

The Tenants were served with a two month notice to end tenancy for landlord's use of property dated November 16, 2021 (the "Two Month Notice"). This notice had an

effective date of January 31, 2022. The reason for this notice was 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.” The Two Month Notice includes a buyer’s notice to seller for vacant possession signed by the Purchasers.

According to DD, she and her spouse PC viewed the property in November 2021 with their realtor, and made an offer for the property which included a notice to the Tenants for vacant possession. DD stated that there was a person who was following them around that limited their ability to do a thorough inspection. DD confirmed that the Purchasers did not pay for an inspection report and there was no condition for an inspection on the offer.

DD stated that on February 3, 2022, the possession date, PC attended the rental unit with the Purchasers’ realtor for a walkthrough. DD explained that she did not attend the walkthrough because she was sick and isolating elsewhere. DD referred to a prescription receipt dated February 5, 2022 submitted into evidence. According to DD, PC noted the following areas where repairs or cleanup were needed for the property:

- Septic tank to be emptied and septic pump repaired
- Broken exterior hose bibs
- Basement shower with no shower diverter or shower head, and large hole in wall
- Garbage and old paint in crawlspaces
- Garbage and rat feces in cottage
- Overgrown grounds and evidence of rodents
- Fireplace inspection and repairs
- Full gutters and de-mossing for roof
- Two dead trees to be removed
- Extensive cleaning to house and cottage
- Repairs to various appliances
- Changing locks due to no keys and changing locks for mailbox

DD stated that PC texted her pictures of the property on February 3 and 4, 2022. DD stated that PC began arranging for repairs and cleaning to prepare for the Purchasers to move in.

DD stated that she was extremely sick at the time and became overwhelmed with the condition of the property. According to DD, she was upset and felt unable to cope with what was necessary to get the property into a livable condition, so she posted the

property for rent on Craigslist on February 8, 2022. DD stated that she did not want to deal with the property.

DD stated that on February 12, 2022, she was feeling better and was able to see the property in person. DD stated that after seeing the property, she decided it was livable even though a lot of work would be required. DD confirmed that she removed the Craigslist ad on February 15, 2022. The Purchasers submitted a screenshot of the listing showing the dates for posting and update.

DD stated that PC received the NDRP Package for this dispute on February 18, 2022, and she received her copy on February 25, 2022.

According to the Purchasers' written statement, the Purchasers had continued to clean the property and perform house repairs between February 3 and 23, 2022. The Purchasers submit that they had their furniture delivered to the property on February 23, 2022. The Purchasers further submit that most of the cleaning and repairs were completed by March 15, 2022, at which time the Purchasers moved in and have occupied the house since. DD stated that the Purchasers did not rent out the house and have no intentions of ever renting the house.

DD acknowledged that the Purchasers own several properties in British Columbia. DD stated that PC is living in the property full-time and she is there most of the time. DD stated that PC travels to a different city for medical treatment.

The Purchasers submitted pictures with date and time stamps taken between November 2021 and November 2022, showing the conditions of the property before, during, and after repairs and cleanup. Pictures taken by DD dated March 21, 2022 and onwards show furniture and personal belongings inside the home, as well as PC and the Purchasers' pet. The Purchasers also submitted various invoices for repairs.

In response, TM stated that the Tenants moved out on January 22, 2022, did a walkthrough on January 28, 2022, and received a return of their deposits in full. TM stated that on February 9, 2022, the Tenants found the Craigslist ad listing the property for rent at \$3,500.00 per month with a one-year term available starting March 1, 2022. TM stated that there were pictures of the property taken after the Tenants had moved out. TM stated that she called the Residential Tenancy Branch and was told she could file a dispute. TM confirmed the Tenants sent copies of the dispute documents to the Purchasers via registered mail on February 16, 2022. MW stated that Holywell

Properties had offered to help the Tenants with filing a claim through the Residential Tenancy Branch.

TM described the contents of the condition inspection report, which include a move-in inspection on November 14, 2018 and a move-out inspection on January 28, 2022. TM described that most items were shown to have undergone “no changes” by the end of the tenancy. A few comments noted include minor scratches, no light cover, and holes in walls from pictures. TM stated that the keys were noted as returned on the report. TM stated that the report did not note and repairs to be completed at the start of the tenancy or any damage at the end of the tenancy. TM confirmed that it was signed by an agent for Holywell Properties and by MW on behalf of the Tenants. The Tenants also submitted an email from Holywell Properties indicating that they would be happy to have the Tenants as tenants in another one of their properties.

JB argued that the condition inspection report was as between the previous landlord and the Tenants during the tenancy only. JB argued that it did not matter if the mess was left behind by the previous landlord, as the Purchasers had to address those issues at the time of purchase. JB submitted that the Purchasers moved into the rental unit within a reasonable time given the repairs, have resided in the rental unit for about one year, and are still residing in the rental unit. JB argued that the issue of good faith is relevant when setting aside a two month notice to end tenancy for landlord’s use and is not relevant for the purposes of determining compensation under section 51(2) of the Act.

KC argued that the Purchasers were not interested in the condition of the property at the time of purchase as they did not have an inspection done. KC emphasized that the Purchasers do not dispute having listed the property on Craigslist for rent starting on March 1, 2022 and for \$1,100.00 more a month than what the Tenants had paid. KC argued that the Two Month Notice was not given in good faith.

Analysis

1. Are the Tenants entitled to compensation under section 51(2) of the Act?

Section 49(5) of the Act permits a landlord to 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.

In this case, I have reviewed a copy of the Two Month Notice and find that it is a valid notice to end tenancy in form and content under section 52 of the Act. I find the tenancy ended on January 31, 2022 pursuant to the Two Month Notice and in accordance with section 49(5) of the Act.

In this application, the Tenants seek compensation of 12 months' rent from the Purchasers under section 51(2) of the Act, which states:

Tenant's compensation: section 49 notice

51 [...]

(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.

Policy Guideline 50. Compensation for Ending a Tenancy ("Policy Guideline 50") states:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

I find the stated purpose for ending the tenancy under the Two Month Notice was for the Purchasers or their close family members to occupy the rental unit.

I find it is not disputed that the rental unit was listed for rent on February 8, 2022 for a start date of March 1, 2022. However, I find it is not alleged that the rental unit was in fact rented out. I accept the Purchasers had their furniture and belongings moved to the property on February 23, 2022, which I find to be supported by a moving invoice. I accept Purchasers' evidence that they moved into the rental unit in mid-March 2022. I find the pictures of the rental unit taken from March 2022 to November 2022 support the Purchasers' claim that they have been occupying the rental unit during that time.

According to Policy Guideline 50, a reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances, but will usually be a short amount of time. Policy Guideline 50 further states:

For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

In this case, I find the Purchasers took approximately 1.5 months to move into the rental unit after the effective date of the Two Month Notice. I find this period to be reasonable in the circumstances.

First, I accept the Purchasers did not take possession of the property until February 3, 2022, and that DD was isolating during early February 2022 due to being sick. Second, I find the pictures submitted into evidence by the Purchasers show that there was still cleanup to be done around the property. I accept that the cleanup needed was not necessarily related to the Tenants. I accept that the Tenants had left the rental unit in similar conditions to when they had moved in at the start of the tenancy and received their deposits back in full. Nevertheless, I find the pictures show that the property appears to be older and in need of repairs. I find the Purchaser submitted invoices in support of the repairs that they made, such as the septic tank service invoice dated February 11, 2022, as well as contractor invoices dated March 3 and 14, 2022. I find the property was not move-in ready and that it was not unreasonable for the Purchasers to take a few weeks to clean, repair, and update it to their standards before moving in.

I note that posting an ad to rent out the property for a starting date before the expiry of the six-month period would likely be evidence of bad faith that could cause a two month notice to end tenancy to be set aside on an application to cancel such a notice by a

tenant. However, I agree with the Purchasers' submission that for the purposes of determining whether compensation is due under section 51(2) of the Act, the question is whether the rental unit was in fact used for the purpose stated on the notice to end tenancy, within a reasonable time after the effective date and for at least six months. As mentioned above, I accept that the Purchasers moved into the rental unit in mid-March 2022 and have occupied the property since.

Based on the foregoing, I conclude that the Purchasers accomplished the stated purpose of the Two Month Notice within a reasonable time after the effective date of January 31, 2022. I further find the rental unit has been used for the stated purpose for at least six months' duration.

Therefore, I conclude that the Tenants are not entitled to compensation under section 51(2) of the Act.

2. Are the Tenants entitled to reimbursement the filing fee?

The Tenants have not been successful in this application. I decline to award the Tenants reimbursement of the filing fee under section 72(1) of the Act.

Conclusion

The Tenants' application is dismissed in its entirety without leave to re-apply.

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: March 25, 2023

Residential Tenancy Branch