



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the former Tenants on June 30, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- 12 times their monthly rent pursuant to section 51(2) of the Act; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on March 21, 2023, and was attended by the former Tenants, the Purchaser, and the Purchaser's spouse R.B. All testimony provided was affirmed. As the Purchaser acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) and raised no concerns with regards to service date or method, the hearing proceeded as scheduled. The participants were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The participants were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that personal recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Residential Tenancy branch Rules of Procedure (Rules of Procedure), I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

The Purchaser stated that their given name is misspelled in the NODRP. The Application was amended accordingly as there were no objections.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (Branch) under Section 9.1(1) of the Act.

Preliminary Matter #3

As the Purchaser acknowledged receipt of the Tenants' documentary evidence and raised no concerns that any of the documentary evidence before me from the Tenants should be excluded from consideration, I have considered it in rendering this decision. However, the Purchaser acknowledged that the documentary evidence before me was not served on the former Tenants. The ability to know the case against you and have an opportunity to respond is fundamental to the dispute resolution process. As a result, I find that it would be significantly prejudicial to the former Tenants and a breach of the Rules of Procedure and the principles of administrative justice to accept the Purchaser's documentary evidence for consideration. I therefore excluded it from consideration as the evidence service timelines are well past and the hearing was already underway.

Issue(s) to be Decided

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

Are the former Tenants entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the tenancy ended because of a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) as it was sold to the Purchaser, who requested in writing that it be served by the previous owner as the Purchaser, or their close family member intended to occupy the property. The parties also agreed that rent at the time the tenancy ended was \$1,500.00 per month and that neither the Purchaser nor their close family member occupied the rental unit in compliance with the stated reasons for ending the tenancy given on the Two Month Notice.

At the hearing the Purchaser and their spouse argued that the former Tenants should not be entitled to compensation under section 51(2) of the Act as extenuating circumstances prevented them from following through with occupancy of the property as follows. The Purchaser stated that they entered into a contract of purchase and sale to buy the property on February 22, 2022, with a purchase price of \$877,000.00 and under the condition that they be provided with vacant possession on June 1, 2022. The Purchaser stated that they purchased this secondary home as they have many friends and family in that area and the home had the amenities they wanted. The Purchaser and their spouse stated that due to the state of the housing market, they did not add a condition for financing to the contract of purchase and sale, and that due to unforeseen changes to mortgage eligibility criteria and increased interest rates, they were unable to qualify for a traditional mortgage and had to accept a private mortgage with unfavorable interest rates and payment terms on the closing date for the sale in order to fulfill their contractual obligation to purchase the property.

The Purchaser stated that they ended up with a \$5,700.00 monthly mortgage payment, rather than the \$2,800.00 monthly payment they had anticipated, and that due to this increased monthly payment amount and changes to their financial situation, such as a reduction in available contracts/work, they could not afford to keep the property without renting it out. As a result, they stated that it was re-rented to help them stay afloat until it was ultimately re-sold on December 15, 2022, for a significant loss.

The former Tenants argued that they have faced significant emotional and financial hardship because of the eviction, as they are now paying \$12,000.00 more per year in rent and have also suffered job loss. The former Tenants stated that they were very upset to learn that the rental unit had been re-rented without providing them the opportunity to stay, and called into question the Purchaser's motives given it was posted

for re-rental on June 1, 2022. A copy of the advertisement was submitted for my consideration. The former Tenants also called into question the Purchasers motives, alleging that a deal to purchase an adjacent lot for redevelopment had fallen through, and stating that they had been told by the Purchaser that they were being evicted because they paid below market rent. The Purchaser denied these allegations.

Analysis

I am satisfied that the tenancy ended because of the Two Month Notice and that rent in the amount of \$1,500.00 was due each month at the time the tenancy ended. I am also satisfied that the rental unit was never occupied by the Purchaser or their close family member(s) after the effective date of the Two Month Notice and before being subsequently sold on December 15, 2022.

Although the Purchaser argued that they should be exempted under section 51(3) of the Act from having to pay the former Tenants compensation under section 51(2) of the Act, I disagree. The Purchaser chose to purchase the property, which they stated was intended to be a second home, and to have the seller issue the Two Month Notice, knowing that they had not secured financing for the mortgage and without adding a financing condition to the contract of purchase and sale. I find that this choice carried an inherent and reasonably foreseeable risk that they may not be approved for a mortgage, or that the terms of any mortgage obtained may not be to their liking or within their financial means. I therefore find the fact that interest rates rose, and mortgage qualification criteria changed, resulting in the need for the Purchaser to enter into a private mortgage with unfavorable terms to meet their obligations under the contract of purchase and sale is not an extenuating circumstance for the purpose of section 51(3) of the Act. I am satisfied that this outcome was reasonably foreseeable under the circumstances and not outside a reasonable owner's control, as the Purchaser could simply have secured financing before entering into the contract of purchase and sale, added a financing condition to the contract, or waited to serve the Two Month Notice until after they had secured financing and therefore knew whether they would be able to afford the property for their own use.

Further to the above, I find that this circumstance is very similar to one of the examples given in Residential Tenancy Policy Guideline (Policy Guideline) #50 for situations that are probably not extenuating circumstances, specifically the example where a landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds. In this case I am

satisfied that the Purchaser failed to adequately budget for the cost of the mortgage, as they failed to obtain one prior to entering into a contract of purchase and sale and did not add a financing condition to their contract, leaving them in the unfortunate position of being unable to afford to keep the home for their own use as a secondary home.

As a result of the above, I therefore dismiss the Purchaser's claim that extenuating circumstances under section 51(3) apply and I therefore grant the former Tenants \$18,000.00 in compensation pursuant to section 51(2) of the Act, which represents 12 times the \$1,500.00 rent that was due under the tenancy agreement. As the former Tenants were successful in their Application, I also grant them recovery of the \$100.00 filing fee. Pursuant to section 67 of the Act, I therefore grant the former Tenants a Monetary Order in the amount of \$18,100.00 and I order the Purchaser to pay this amount to the former Tenants.

Conclusion

Pursuant to section 67 of the Act, I grant the former Tenants a Monetary Order in the amount of **\$18,100.00**. The former Tenants are provided with this Order in the above terms and the Purchaser must be served with this Order as soon as possible. Should the Purchaser 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 Branch under Section 9.1(1) of the Act.

Dated: March 22, 2023

Residential Tenancy Branch