



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenants (hereinafter, the “Tenant”) filed an Application for Dispute Resolution on June 24, 2022 seeking compensation from the Landlord. This is related to their former landlord’s issuance of a Notice to End Tenancy for the landlord’s Use of Property (the “Two-Month Notice”) issued on July 31, 2021. This was issued by the landlord because of the purchase of the rental unit property by the Purchasers (hereinafter, the “Purchaser”).

Additionally, the Tenant applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 16, 2023 and March 24, 2023. Both the Tenant and the Purchaser attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – Tenant service of the Notice of Dispute Resolution Proceeding and evidence to the Purchaser

In the March 16, 2023 hearing, the Purchaser confirmed they received the Notice of Dispute Resolution Proceeding and the Tenant’s prepared evidence. This was to the Tenant’s former rental unit address, that property that was the subject of a sale in 2022.

The Tenant completed this service via registered mail, sent on July 15, 2022. In their evidence, they provided a record of the post office purchase and two registered mail labels that have tracking numbers.

The Landlord confirmed they received the Notice of Dispute Resolution Proceeding and Tenant's evidence in this manner. I find the Tenant completed initial service as required, and their evidence forms part of the record in this hearing.

Preliminary Matter – Purchaser service of evidence to the Tenant

As set out in my Interim Decision of March 17, 2023, I adjourned this matter to allow for proper disclosure of the Purchaser's evidence to the Tenant.

The Tenant, as the Applicant in this proceeding, did not update their contact information with the Residential Tenancy Branch, nor did they advise the Purchaser, as the Respondent, of their address change.

I find the Purchaser correctly completed service as required by the Residential Tenancy Branch *Rules of Procedure*. This was using registered mail, attempting a substituted service through the Residential Tenancy Branch when that registered mail was not retrieved. I afforded the Tenant one more opportunity to receive the materials that the Purchaser was attempting to serve using every means available to them. In the March 16 hearing, the Tenant confirmed their correct email address. I authorized the Purchaser to forward their evidence to the Tenant by this method.

In the reconvened hearing on March 24, the Tenant stated they did not receive material from the Purchaser. I allowed the Purchaser to provide proof of their outgoing emails to show they completed service via that method as I authorized. I have reviewed those outgoing email records. I find the Purchaser completed this with email at 5:16pm on March 17, 2023. The Purchaser attached their evidence as one attachment to that email.

The Purchaser's agent also verified that they copied the Purchaser on that email, and provided that message as shown received by the Purchaser in their Inbox.

This is irrefutable proof that the Purchaser completed service as required in this matter. The Applicant did not facilitate the matter by responding to what I find is credible information from the Purchaser that they attempted to contact the Tenant directly to verify a proper address to use for this purpose. The Tenant's response, as shown in a text message on a direct query from the Purchaser was: "Is it important to me".

The Tenant also did not amend their Application to include correct address for service information. This delayed the process, and I find the Purchaser shall not be prejudiced by exclusion of their evidence for any reason other than the Tenant's non-contribution to the very important and fundamental matter of service.

With service accomplished by the Purchaser as required, I give full consideration to the evidence they present herein. This consists of various documents showing proof of their residence at the former rental unit. I examine these in detail below.

Background and Evidence

The Tenant provided a copy of their tenancy agreement they had with the previous landlord. They signed this agreement on July 12, 2012 for the tenancy starting on that same day. The rent amount at the start of the tenancy was \$1,500. The Tenant stated in the hearing that the rent amount increased to \$1,800 on February 1, 2018.

The Tenant's former landlord issued the Two-Month Notice on November 30, 2021. The Tenant did not challenge the validity of this via dispute resolution. They moved out from the rental unit on February 1, 2022.

In the evidence, the Tenant submitted a copy of the 'Tenant Occupied Property – Buyers Notice tot Seller for Vacant Possession'. This states the Purchaser entered into a contract of purchase and sale with the former landlord, dated November 9, 2021. This was the formal Purchaser's request for vacant possession of the rental unit by March 1, 2022.

In the hearing, the Tenant presented that after they moved out, they later found out the Purchaser was renovating at the rental unit property. Information about the Purchaser's renovations at the home was relayed to the Tenant via their former neighbours. They named three witnesses who were neighbours, and paraphrased one neighbour's statement to them that "oh, they're renovating".

The Tenant presented pictures of what they submitted were renovations at the property. This showed extra vehicles parked on the road that the Tenant described as belonging to contractors who were working at the rental unit.

The Tenant reiterated that the end of their tenancy presented a challenge for their family involving school, and also a significant burden to find a new place to live at that time. A

separate photo shows a gate installed, described by the Tenant as the Landlord “renovating massively since Mar, 2022”. Other photos show wood material and other construction materials present on the driveway at the rental unit property.

In response to this, the Landlord provided that they were living in the rental unit as soon as it became available. They provided the following materials:

- a contract of purchase and sale for the rental unit property
- a contract of purchase and sale for their former property and principal residence
- electrical utility invoices on which their name clearly appears
- a picture of their vehicle and its associated insurance registration, showing the vehicle owner’s address as that of the rental unit property
- four photos showing the rental unit is lived in, with present furniture and closets that are in-use. One photo shows work being done to the main stairs in the home.
- an affidavit from one contractor, dated September 14, 2022, who states they “personally witnessed the owners . . . living in the address since they took over the home in early March and throughout the entire time of the homes renovation.”
- record of a new internet service provider showing a new connection for March 2022, with the Purchaser as the account holder
- an invoice from an ambulance service that attended on May 15, 2022, addressed to the purchaser at the property, for an ambulance visit to that rental unit property

In the hearing, the Purchaser also stated they did not understand what the whole process was about, as stemming from the Tenant. They stated plainly that it takes a few months to undertake some renovations at that new home, which were cosmetic renovations. They also stated their concern that some of the photos provided by the Tenant amount to a trespass at the rental unit property.

Analysis

Under s. 49 of the *Act* a “landlord” or a “purchaser” may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. The Tenant’s former landlord issued the Two-Month Notice on November 30, 2021 for this reason.

There is compensation awarded in certain circumstances where a purchaser issues a Two-Month Notice. This is covered in s. 51:

- (2) Subject to subsection (3). . .the purchaser who asked the landlord to give the notice must pay the tenant . . .an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if . . . the purchaser . . . 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 . . . 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.
- (3) The director may excuse . . . the purchaser . . . from paying . . .if, in the director's opinion, extenuating circumstances prevented . . . the purchaser . . . from
- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
 - (b) using the rental unit . . . for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this matter, the onus is on the Purchaser to prove that they accomplished the purpose for ending the tenancy and that they used the rental unit for its stated purpose for at least 6 months.

On my review of the present matter, I find the Purchaser accomplished the stated purpose for ending the tenancy. The evidence shows they used the rental unit for the reason indicated, for at least 6 months' duration. Specifically, that is their own use *or* that of a close family member.

The Purchaser presented irrefutable evidence that they occupied the rental unit, and continue to do so. This is in the form of photos, pictures, and a direct statement from a contractor. With respect to the *Act*, there is nothing preventing the Purchaser from undertaking renovations of the sort presented here. In any case, the Purchaser occupied the rental unit. I give greater weight to the evidence presented by the Purchaser for this hearing.

By contrast, the Tenant presented what I conclude is a conjecture on the Purchaser's use of the rental unit property. They presented statements from their former neighbours in the area; however, this was not in the form of direct evidence or testimony. The photos do not in any category show non-residence by the Purchaser. I give this material less weight, and it was not bolstered by direct testimony of the Tenant in the hearing to show otherwise.

I find the evidence clearly shows the Purchaser continued occupancy of the rental unit. For this reason, I find the Purchaser has offset the burden of proof to show there was no

violation of the *Act*. For this reason, there is no compensation to the Tenant under the *Act* s. 51.

I dismiss the Tenant's claim in its entirety. Because the Tenant was not successful in their claim, I make no award for the Application filing fee.

Conclusion

For the reasons outlined above, I dismiss the Tenant's claim for monetary compensation, without leave to reapply. There is no further avenue via the Residential Tenancy Branch, for relief via the dispute resolution process.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 27, 2023

Residential Tenancy Branch