



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 November 15, 2021. They are seeking compensation related to the Landlord ending the tenancy.

The matter proceeded by hearing on June 16, 2022 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

At the outset of the hearing, each party confirmed their receipt of the other’s prepared evidence package. On this confirmation, I proceeded with the hearing as scheduled.

Preliminary Matter – Tenant’s disclosure of evidence

At the start of the hearing, I reviewed all parties’ evidence in this matter. The Tenant set out that they provided the Notice of Dispute Resolution Proceeding to the Purchaser in July, 2022. This was after the Residential Tenancy Branch provided that document to them on July 14, 2022. This was via registered mail to each of the two named Purchasers, sent on July 17, 2022.

In the hearing the Purchaser confirmed they received this from the Tenant. As they stated in the hearing, the “entire package was sent to us”.

The Tenant provided further evidence to the Landlord via registered mail on February 7, 2023. Specifically, this is a sheet dated January 18, with 16 photos provided. The Purchaser did not retrieve this registered mail, and it was returned to the Tenant as unclaimed.

The Purchaser confirmed that they did not receive the February mail package from the Tenant. They were out of the country from January 15, 2023 to March 15, 2023.

The Purchaser stated they moved out from the address they provided as the address for service in this matter, in June 2022. This was so they could take up residence at the rental unit, as set out in the Two-Month Notice to End Tenancy for Landlord's Use. The Purchaser rented out this former address – *i.e.*, the address for service – in mid-June.

In sum, the Purchaser stated they could not receive the more recent evidence provided by the Tenant: they were not residing at the address for service as originally provided on the Two-Month Notice, and they were out of the country and not able to accept registered mail when the Tenant had sent it.

The Purchaser did not provide an updated address for service, neither to the Residential Tenancy Branch, nor the Tenant as the Applicant in this hearing. I find the Landlord was aware of this proceeding and their role in July 2022 with the delivery of materials from the Tenant. The Purchaser moved out from the address for service; however, they did not notify the Tenant. The Purchaser also did not make another means of contact available, such as email communication.

I find the Tenant sent evidence to the Landlord as required for the purpose of this hearing. This was within the timeframe set out in the *Residential Tenancy Branch Rules of Procedure*, specifically Rule 3.14 that specifies:

documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly . . . not less than 14 days before the hearing

Because the Tenant sent evidence to the Purchaser's address for service – with no other updated information – and within the required timeline, I give full consideration to that evidence in this hearing. The Purchaser was fully aware of the upcoming hearing, and did not provide alternate means of contact, or an updated address for service, to the Tenant in this matter. There is no other evidence the Purchaser contacted the Residential Tenancy Branch to inquire on preparation for this hearing, despite the information sent to them at the outset of this proceeding from the Tenant directly.

Preliminary Matter – Purchaser's disclosure of evidence

The Purchaser provided evidence directly to the Residential Tenancy Branch on March 17, 2023. In the hearing, the Purchaser stated that they did not provide this evidence to the Tenant.

As per the *Residential Tenancy Branch Rules of Procedure*, Rule 3.15 specifies:

The respondent must ensure evidence that they respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. . [T]he respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find the Purchaser did not adhere to this rule for this hearing process. As per Rule 3.17, I exclude this evidence from consideration because the Landlord submitted it with seven days, and only to the Residential Tenancy Branch. As set out above, the Tenant served the Purchaser with information about this hearing – including the complete information about a respondent's role and evidence – in July 2022. The Purchaser cannot rely on their more recent travel outside of the country to avoid the rules of evidence in this legal proceeding that involves the Tenant's rights, and the Purchaser's obligations under the *Act*.

In sum, I give no consideration to evidence provided by the Purchaser in this hearing.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation for the Purchaser ending the tenancy, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to recover the filing fee for the Tenant's Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant did not provide a copy of the tenancy agreement they had with their former landlord for this rental unit. In the hearing, they confirmed the basic facts that the tenancy started on March 1, 2018, and ended on April 1, 2022. They listed the rent amount on their Application as \$2,385, and verified this amount verbally in the hearing.

In the hearing, the Purchaser reiterated that they never had any interactions with the Tenant here, and never acted as their Landlord. The Tenant had moved out from the rental unit in line with the Purchaser's new ownership of the rental unit in 2022.

The Tenant submitted evidence that the Landlord sold the property in 2022. This was an image of the document "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession", executed by the Purchaser on February 28, 2022. This sets out that the Purchaser entered into a contract for the purchase and sale of the rental unit property on February 27, 2022. This was the Purchaser's request to the landlord that they require the Tenant to move out from the rental unit by May 31, 2022. This document bears the signature of the Purchaser.

The Tenant also presented their copy of the Two Month Notice to End Tenancy for Landlord's Use (the "Two-Month Notice") served on March 18, 2022. This was delivered in person to the Tenant, and they did not challenge the landlord issuing that notice via the dispute resolution process. The scheduled end-of-tenancy date was May 31, 2022.

Page 2 of that document provides names of the Purchaser, and the Purchaser's address for service as provided on the Buyers Notice document.

In the hearing the Tenant summarized their findings post-tenancy concerning the Purchaser's actual use and occupancy of the rental unit. They directly observed extensive renovations at the rental unit, and provided photo evidence thereof. These were specific to the time period June 2022 through to January 2023. Having experience with building and renovations, the Tenant specified that the rental unit was not in a livable condition, with no windows, drywall removed, and a balcony removed. Additionally, they never saw any vehicle parked at the rental unit when they visited the area.

The Purchaser provided that they continued to reside at the rental unit, despite the ongoing renovations that are limited to the ground floor only. The Purchaser resides in one single room in the rental unit. They reiterated that they never rented to new tenants.

Analysis

Under s. 49 of the *Act* a Landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. There is compensation awarded in

certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 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 . . . an amount that is the 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 of 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.
- (3) The director may excuse . . . the purchaser who asked the Landlord to give the notice 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, or
 - (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.

The onus is on a purchaser to prove they accomplished the purpose for ending the tenancy. If this is not established, the amount of compensation is 12 times the monthly rent. A purchaser may only be excused from these requirements in extenuating circumstances. This is not a question of a purchaser's "good faith" in issuing the Two-Month Notice -- that question is the proper focus when a Tenant applies to challenge the actual end of the tenancy and the Tenant did not do that here.

In this present hearing, I find the Tenant did not provide sufficient evidence to verify the amount of rent they were paying in the tenancy agreement. This is a basic piece of information necessary to verify the amount of twelve months' rent compensation in these circumstances. Were this a matter between the former landlord and the Tenant, the landlord could verify the amount in affirmed testimony. Given that the Purchaser would have no other way to know the amount of rent paid, I find that verifying this basic amount is the responsibility of the Tenant.

This is also a basic measure where one party is claiming compensation: the party claiming compensation must prove the amount or value of compensation. The criteria for proof of the amount in question applies in this situation where a statutory remedy is in place, as set out in s. 51.

Minus this proof from the Tenant, I dismiss their claim for compensation under s. 51 of the *Act*, without leave to reapply. Because the Tenant was not successful in this Application, I grant no reimbursement of the Application filing fee.

Conclusion

For the reasons outlined above, I dismiss the Tenant's claim for compensation related to the Purchaser's Two-Month Notice. This is without leave to reapply.

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 22, 2023

Residential Tenancy Branch