



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNETC, FFT*

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act* and for the recovery of the filing fee.

The rental unit is a two-level house, and it was sold on February 11, 2022. The possession date for the new owner was May 07, 2022. The new owner requested the landlord to serve the tenant with a notice to end tenancy for landlord's use of property. The tenant found the home address of the new owner from the paperwork he received along with the notice to end tenancy.

The tenant testified that he attempted to serve the new owner who is the current landlord with the notice of hearing in person on January 11, 2023, at the address that he had. The tenant visited this address but did not find the landlord there.

The tenant testified that he then proceeded to rental unit and knocked on the door. He asked the occupant for the landlord, and they made a phone call to the landlord. The landlord came to the rental unit and identified herself to the tenant. The tenant's spouse video taped the meeting. The tenant explained to the landlord the reason for his visit and handed over the hearing package to the landlord. The tenant stated that the landlord explained that the tenant needed to serve the prior owner with the hearing package and refused to accept it. The tenant placed the package on the landlord's vehicle in the presence of a witness.

This interaction was video taped by the tenant's spouse and filed into evidence.

Despite having been served with the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started on January 15, 2018. and ended on April 04, 2022, pursuant to a notice to end tenancy for landlord's use of property dated February 24, 2022. The effective date of the notice was April 30, 2022. The rent at the end of the tenancy was \$1,950.00 due on the first of each month.

The reason for the notice as indicated on the notice was:

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 tenant stated that when he lived at the rental unit, he developed a good relationship with the neighbour (AM). The tenant's son used to tutor AM's two children. The tenant added that his son continued to tutor AM's children even after they moved out of the rental unit and currently continues to do so.

The tenant received updates about the occupancy of the rental unit on a regular basis from his son and from his ex-neighbour AM. The tenant filed multiple photographs of the rental unit that show that the unit is probably unoccupied. The tenant testified that the last photograph was taken on September 17, 2022. According to the tenant the rental unit remained unoccupied till September 2022 at which time renovations started. A carpet installer was seen entering the unit with his equipment and carpet roll as were other trades people.

On November 04, 2022, the tenant saw advertisements for the upper floor of the rental unit on social media (Market place). The tenant contacted the landlord by text message and enquired if the whole house was also available for rent and received a reply in the affirmative and at a higher rent. The tenant filed copies of the advertisements and his conversation by text message with the landlord, into evidence. The tenant testified that in early December 2022, new tenants moved into the rental unit.

The tenant called AM to testify as his witness. AM is currently still residing in the house adjacent to the rental unit. AM testified that the house appeared to be unoccupied from the time the tenant moved out in April 2022 until December 2022. AM stated that he found out who the new owner/landlord is when he witnessed the tenant serving her with the notice of hearing package. He stated that he sees the landlord at the rental unit about three to four times a week.

The tenant seeks an amount equal to twelve times the monthly rent as compensation from the landlord for not complying with the two-month notice to end tenancy for landlord's use of property.

Analysis

Pursuant to Section 51 of the *Residential Tenancy Act*, a tenant who receives a notice to end tenancy under Section 49 which is for landlord's use of property and steps have not been taken to accomplish the stated purpose for ending the tenancy under Section 49, within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

In this case, the tenant received the notice to end tenancy for landlord's use of property under Section 49. The notice indicated 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 the notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

Based on the testimony of the tenant and his witness and in the absence of any contradictory evidence, I find on a balance of probabilities that it is more likely than not, that the new landlord did not move into the rental unit and left it vacant for a period of seven months. After six months of vacancy, in November 2022, the landlord started advertising the availability of the rental unit at a higher rent and a new tenant was found for December 2022. The documents filed into evidence by the tenant corroborate and support the testimony of the tenant and his witness AM.

The actions of the landlord which include advertising the availability of the unit at a higher rent indicate that on a balance of probabilities it is more likely than not that the landlord served the notice to end tenancy because she intended to re rent the unit at a higher rent and that she did not intend to move into the rental unit.

Based on the above, I find that the landlord must pay the tenant \$23,400.00 which is the equivalent of twelve times the monthly rent. The tenant has proven his case and is entitled to the filing fee of \$100.00.

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for the amount of \$23,500.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$23,500.00**.

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 09, 2023

Residential Tenancy Branch