



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation related to a Notice to End Tenancy for Landlord's Use of Property pursuant to section 51;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenant's application and respective evidence submissions on file.

Issues

Are the tenants entitled to a monetary order for compensation relating to a Notice to End Tenancy for Landlord's Use of Property?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background & Evidence

This tenancy began on September 1, 2017 with the previous owners of the property. The landlord purchased the property September 7, 2021.

On September 27, 2021, the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49 of the Act, with an effective date of November 30, 2021. The notice was issued on the grounds that the landlord or a close family member of the landlord intends to occupy the rental unit.

The tenants vacated the rental unit on November 30, 2021, as per the effective date of the Notice. The monthly rent prior to the end of the tenancy was \$1100.00.

The tenants are claiming an amount equivalent of twelve times the monthly rent as compensation due to the landlord not using the rental property for his own use after issuing the Two Month Notice.

In support of their claim the tenants submitted evidence of the house being listed for sale and sold four months after they vacated. The tenants submit the landlord resold for a profit while they were rendered homeless for six months before having to move to another city.

The landlord counsel submits that the landlord does not dispute the property was resold within four months but rather that there were extenuating circumstances that prevented the landlord from occupying the rental unit.

The landlord's counsel submits that the landlord and his wife had every intention to move in to the property as their retirement home but after they took possession found extensive damage including rodent problems, serious plumbing issues and a furnace that was not working. The landlord's wife has a medical condition which caused concerns as she cannot be exposed to bacteria from rodent droppings. The landlord incurred considerable expenses in doing renovation work on the property. Due to all of the above, the landlord determined this was not a suitable purchase for them to reside in and made the decision to resell the property.

In reply, the tenants submit that they left the rental unit clean and their damage deposit was returned in full without issue. They lived in this property for five years and it is on an acreage with goats, chickens etc, therefore rodent droppings should not be a surprise to the landlord. The landlord could have had the property inspected prior to purchase. If renovations were required, they could have continued to live there while the landlord completed those.

Analysis

Section 51 (2) of the Act provides that if 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, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, or the purchaser, as applicable under section 49, must pay the

tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement. The onus is on the landlord to establish that the stated purpose for ending the tenancy was accomplished.

Pursuant to section 51(3), the director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or 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.

There was no dispute that the landlord did not accomplish the stated purpose for ending the tenancy after the effective date of the Two Month Notice. It was the respondents lack of due diligence to purchase the property without a proper inspection and to issue a Two Month Notice to the tenants before knowing the extent of any renovation work required. Additionally, I find the landlord has not demonstrated that extensive renovation work was even required to begin with. The evidence submissions of the landlord including the clean-up work and renovation work and receipts are all minor in nature and not something that should result in the landlord not carrying out the intended purpose of ending the tenancy. Further, the landlord failed to submit any evidence of his wife's medical condition and how rodent droppings may affect such condition.

I allow the tenants claim and award an amount of \$13,300.00, which is twelve times the monthly rent of \$1100.00 plus the \$100.00 filing fee.

Conclusion

Pursuant to section 51 of the *Act*, I grant the tenants a Monetary Order in the amount of \$13,300.00. Should the landlord 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 03, 2023

Residential Tenancy Branch