



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm receipt of each other's evidence packages.

Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started in 1996 and ended on February 28, 2022. Rent of \$1,073.00 was payable monthly. The Tenants were given a two month notice to end tenancy dated December 20, 2021 (the “Notice”). The effective date set out on the Notice is February 28, 2022. The reason stated for the Notice is that the purchaser or a close family member of the purchaser intends in good faith to occupy the unit. The Notice sets out the name of the Respondent as the purchaser (the “Purchaser”). The Notice included a letter from the Purchaser of their intent to occupy the unit.

The Respondent's Agent states as follows: The Purchaser and his wife moved into the unit on March 15, 2022 and resided at the unit until August 31, 2022. It took the Purchaser 15 days prior to the move-in to clean the unit. Copies of a mortgage document and renovation receipts are provided as supporting evidence of the occupation of the unit. Renovations and repairs were immediately commenced on the unit and were completed at the end of July 2022. The unit was listed for sale on June 1, 2022 and was sold on August 7, 2022 with a possession date of August 30, 2022. No documents were provided in relation to the possession date.

The Tenant states as follows: According to the neighbours, who frequently reported activity at the unit to the Tenants, nobody moved into the unit until August 14, 2022. The Tenants would also drive by the property and note that renovations were being done with extensive materials and appliances being brought in and out of the unit. The Tenant provides a copy of a sale advertisement of the unit indicating the unit had been recently renovated. The advertisement also notes the unit being sold on August 7, 2022. There was no residential activity at the unit until after the Tenants made their application.

Analysis

Section 51(2) of the Act provides that subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, 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, except in respect of the purpose specified in section 49 (6) (a), 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.

Given the undisputed evidence that the effective date of the Notice was February 28, 2022 I find that the earliest end date for 6 month's occupation of the unit would have been August 31, 2022.

Evidence of a mortgage amortization schedule is not evidence of occupation of a unit as a residence and there is nothing on any of these documents indicating such. Similarly, evidence of costs paid for renovations and repairs is not evidence of occupation of the unit. I note that the Purchaser did not provide renovation invoices and only provided a copy of a cheque. This cheque is also not evidence of occupation of the unit. I note that the invoices support the Tenant's evidence of major renovations for which the tenancy was not ended. The Landlord provided no other evidence to support their occupation of the unit or the date that they moved out of the unit. Given the undisputed evidence of renovations to the unit, the undisputed evidence of the listing of the unit for sale, the undisputed evidence of the sale of the unit on August 7, 2022, the Tenant's evidence of occupation not occurring until August 14, 2022, and as the Purchaser provides no evidence to support the possession date of August 30, 2022, I find on a balance of probabilities that the Purchaser has not substantiated that they occupied the unit for at least 6 months from the effective date of the Notice. The Tenants are therefore entitled to the compensation of **\$12,876.00** (12 x \$1,073.00).

Section 51(3) of the Act provides that 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, as applicable, 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, except in respect of the purpose specified in section 49
- (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

As there is no evidence of any extenuating circumstances that prevented the occupation of the unit, I find that the Purchaser is not excused from paying the Tenants the compensation set out above. As the Tenants have been successful with their claim, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$12,976.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$12,976.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: May 10, 2023

Residential Tenancy Branch