



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 cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- 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.

While the tenant and his counsel attended the hearing by way of conference call, the landlord did not, although I waited until 2:00 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord should have been aware of the hearing date, time and call-in instructions as this dispute was initiated by the landlord’s application and the landlord was required to serve a copy of the notice of hearing on the tenant.

Accordingly, in the absence of the landlord’s participation in this hearing, I order the landlord’s application dismissed in its entirety without leave to reapply.

The tenant testified that on December 16, 2022, he served the landlord with a copy of his Application for Dispute Resolution by e-mail to the agreed upon e-mail address for service. The tenant testified that on or about August 18, 2022, the landlord sent an acquaintance to have the tenant sign an RTB-51 form providing for e-mail as a valid method of service. The tenant testified that the landlord did not subsequently provide him with a copy of the signed form. The tenant submitted e-mail correspondence dated August 18, 2022, by which the tenant requested a copy of the signed form from the landlord. The tenant submitted a screenshot of the December 16, 2022 e-mail as proof of service of the Application package.

Based on the above evidence, I am satisfied that the landlord was served with the tenant's Application for Dispute Resolution pursuant to sections 89 & 90 of the Act. The hearing into the tenant's application proceeded in the absence of the landlord.

In the hearing, the tenant confirmed his security deposit was returned in full on August 25, 2022 and the tenant waived any potential claim to double the security deposit as a penalty.

Issues

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

This tenancy began on April 1, 2020. The monthly rent prior to the end of the tenancy was \$2500.00. The tenancy was with the previous owners of the property who subsequently sold the property to the landlord on May 4, 2022. The landlord in this application is the purchasing landlord.

On April 25, 2022, the selling landlord served the tenant 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 August 1, 2022. The notice was issued on the grounds that the landlord entered into an agreement in good faith to sell the unit; all the conditions of the sale have been satisfied; and, the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

The tenant vacated the rental unit on August 1, 2022, as per the effective date of the Notice.

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

In support of his claim the tenant's counsel submits as follows:

- In early August 2022 the tenant went to pickup his belongings from the rental unit and at this time the Landlord had informed him that he would be demolishing the rental unit.
- On November 7, 2022, an acquaintance of the tenant attended at the rental property and observed that a person who is not a close family member of the landlord was residing in the rental unit. A sworn affidavit from the acquaintance was submitted as evidence.
- The other person was observed still residing in the rental unit on multiple occasions after this date.
- The landlord has not met his burden to prove the rental unit was used for the stated purpose of ending the tenancy.
- The landlord has not submitted an argument of extenuating circumstances that would have prevented the landlord from doing so.

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.

The landlord failed to attend this hearing and provide any evidence or submissions to dispute the tenant's claim. As such the landlord failed to meet the onus to establish the rental unit was used for the stated purpose. The landlord has failed to make any submission that extenuating circumstances prevented him from doing so.

I allow the tenant's claim and award an amount of \$30,100.00, which is twelve times the monthly rent of \$2500.00 plus the \$100.00 filing fee.

Conclusion

Pursuant to section 51 of the *Act*, I grant the tenant a Monetary Order in the amount of \$30,100.00. 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: May 08, 2023

Residential Tenancy Branch