



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC

Introduction

This dispute relates to the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. \$19,200 for 12 times the monthly rent pursuant to section 51(2) of the Act.

The parties listed on the cover page of this decision attended the teleconference hearing, were affirmed and the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Thereafter the tenants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). I refer to only the relevant evidence related to the facts and issues in this decision.

As the purchaser (Purchaser) did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated November 8, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The tenant provided affirmed testimony that the Hearing Package was served on the Purchaser by registered mail on November 9, 2022, and that the package was addressed to the Purchaser's mailing address listed on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 26, 2022 (2 Month Notice). The tenants provided a registered mail tracking number in evidence, RN 671 069 705 CA.

Documents sent by registered mail are deemed served 5 days after mailing pursuant to section 90 of the Act. The Canada Post receipts submitted in evidence support that the Hearing Package was mailed to the Purchaser's address on November 9, 2022. I find

the Purchaser was duly served as of November 14, 2022 pursuant to section 90 of the Act.

Based on the above, I find the Purchaser has been sufficiently served in accordance with the Act, and that this matter is unopposed by the Purchaser. The hearing continued without the Purchaser present as a result pursuant to RTB Rule 7.3.

Preliminary and Procedural Matters

The tenant confirmed their email address during the hearing and the mailing address of the Purchaser, which is listed on the application before me. The decision will be emailed to the tenant and sent by regular mail to the Purchaser.

Also, a previous decision dated July 11, 2022 (Previous Decision) regarding this tenancy was resolved by way of a settlement agreement. The Previous Decision file number has been included on the cover page of this decision and the Previous Decision should be read in conjunction with this decision. The Previous Decision supports that the Purchaser was aware of the 12-month penalty under section 51(2) of the Act.

As the filing fee was waived for this application, it will not be granted or considered further.

Issue to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. Monthly rent was \$1,600 per month. The 2 Month Notice was also submitted in evidence. The tenancy ended based on the 2 Month Notice, which lists the following as the reason to end the tenancy:

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 tenants confirmed that they vacated the rental unit in July 2022, after the Previous Decision was issued by way of a settlement agreement.

The tenants wrote the following in their application:

The landlord gave me a 2 month notice for landlord use of property in February 2022. The property has since been demolished. I believe that the landlord did not act in good faith and that his intention was to build a 7 unit townhouse complex. In the hearing held in July of 2022 the landlord stated that he and his family intended to move into the property once renovations had been made to bring it "up to his standards". I spoke with the construction crew and they varified the intent for the property is to build town homes. My current rental is right down the street and there has been no one living in [REDACTED] St since we vacated. I also have a copy of the development plan from the hearing held in the city of penticton to approve the development.

The tenants also provided an article supporting that the Purchaser planned to demolish the rental unit to make way for a 7-unit townhome complex.s

Analysis

Based on the undisputed documentary evidence of the tenants and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

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, 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

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for 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.

[emphasis added]

Based on the undisputed evidence before me, I find the Purchaser failed to use the rental unit for the stated purpose of occupying the rental unit and instead demolished the rental unit to make way for a 7-unit townhome complex, which is contrary to the reason stated on the 2 Month Notice.

Therefore, I grant the tenants 12 times the monthly rent of \$1,600 pursuant to section 51(2) of the Act, which is **\$19,200**.

Conclusion

The tenants' application is fully successful.

The tenants have been granted a monetary order pursuant to section 67 of the Act, in the amount of \$19,200. This order must be served on the Purchaser and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the tenants and sent by regular mail to the Purchaser. The monetary order will be emailed to the tenants only for service on the Purchaser.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 30, 2023

Residential Tenancy Branch