



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNETC FFT**

Introduction

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- compensation from the Purchasers related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 31, 2022 (the "2 Month Notice") pursuant to sections 51; and
- authorization to recover the filing fee of the Application from the Purchasers pursuant to section 72.

One of the two Purchasers ("KM") and the Tenant attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated she served the Notice of Dispute Resolution Proceeding and her evidence (collectively the "NDRP Package") on each of the Purchasers by registered mail on September 2, 2022. The Tenant submitted the tracking stubs for service of the NDRP Packages on each of the Purchasers to corroborate her testimony. KM stated Canada Post attempted to deliver two packages for the Purchasers but they would not sign for them. A party may not avoid service under the Act by refusing to sign for the registered mail and then say they were not served. Based on the foregoing, I find the Tenant has proven, on a balance of probabilities, that the NDRP Packages were served on each of the Purchasers pursuant to the provisions of sections 88 and 89. Pursuant to section 90, the Purchasers were deemed to have received the NDRP Packages on September 7, 2022.

Issues to be Decided

Is the Tenant entitled to:

- monetary compensation from the Purchasers?
- recover the filing fee for the Application from the Purchasers?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenant submitted into evidence a copy of the tenancy agreement between the previous landlord's ("Previous Landlords") and the Tenant. The agreement stated the tenancy commenced on May 1, 2015, for a fixed term ending April 30, 2016 with rent of \$920.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of \$475.00 by March 26, 2015 and a pet damage deposit of \$475.00 by April 30, 2015. Tenant stated the rent was \$1,000.00 per month before the tenancy ended. KM stated the Purchasers did not receive a copy of the tenancy agreement and did not know the terms of the tenancy but she did not dispute the testimony of the Tenant. As such, I find the Tenant has proven, on a balance of probabilities, that the rent she was paying to the Previous Landlords was \$1,000.00 per month.

The Tenant stated the Purchasers required the Previous Landlords to serve her with the 2 Month Notice which required her to vacate the rental unit by April 30, 2022. The Tenant submitted into evidence a digitally signed copy of the signed Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession to corroborate her testimony. The Tenant stated she vacated the rental unit April 28, 2022 in accordance with the requirements of the 2 Month Notice. The Tenant stated she found an advertisement on Airbnb that offered the rental unit for short-term accommodation and submitted a copy of it into evidence to corroborate her testimony.

KM stated the Purchasers took possession of, and moved into, the rental unit on April 30, 2022. KM admitted the Purchasers advertised the rental unit on Airbnb prior to the expiry of six months after they moved into the rental unit. KM stated that, when the Purchasers agreed to purchase the residential property, the mortgage payments were

anticipated to be around \$4,000.00 per month. KM stated that, by the time of closing of the purchase and sale of the residential property, variable mortgage interest rates increased to \$5,113.00 per month. KM stated the Purchasers attempted to initially rent the main house on the residential property but were unable to do so. KM stated the Purchasers then started the rent the rental unit for short term accommodations. KM stated the sudden increase in the amount of the variable mortgage payments the Purchasers were required to pay after closing of the purchase and sale of the residential property constituted extenuating circumstances. KM stated that, although the Purchasers put the residential property up for sale in an attempt to avoid foreclosure and bankruptcy, the residential property has not been sold.

Analysis

The Tenant seeks \$12,000.00 compensation pursuant to section 51(2) of the Act the basis the Purchasers did not use the rental unit for the stated purpose in the 2 Month Notice.

Subsections 51(2) and 51(3) of the Act state:

- 51(2) Subject to subsection (3), the landlord...must pay the tenant...an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement *if the landlord...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.*
- (3) The director may excuse the landlord...from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord...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.

[emphasis in italics added]

The effective date of the 2 Month Notice was October 31, 2022. Pursuant to section 51(2) of the Act, the Purchasers were required to use the rental unit for six months after the effective date of the 2 Month Notice, being October 31, 2022. KM admitted the Purchasers rented the rental unit for short term stays through Airbnb prior to October 31, 2022.

KM stated that, when the Purchasers agreed to purchase the residential property, the variable rate mortgage payments were anticipated to be around \$4,000.00 per month. KM stated that by the time of closing of the purchase and sale of the residential property, interest rates had increased to \$5,113.00 per month. KM stated the Purchasers attempted to initially rent the main house on the residential property but were unable to do so. KM stated that they then started to rent the rental unit for short term accommodation. KM stated the sudden increase in the amount of the mortgage payments the Purchasers anticipated to the amount they were required to pay after closing, constituted extenuating circumstances.

As stated in PG 50, the Purchasers cannot end the tenancy for their own use pursuant to the 2 Month Notice and then re-rent the rental unit for short-term or long-term rentals without the Purchasers occupying the rental unit for at least 6 months. As the Purchasers re-rented the rental unit during the 6-month period after the effective date of the 2 Month Notice, they breached the provisions of section 52(2) of the Act. I find the Purchasers should have contemplated that variable interest rate mortgages could increase. I find the Purchasers should have planned for the contingency that variable rates would increase before they agreed to purchase the residential property. As such, I find the Purchasers assumed the risk of being required to pay the Tenant compensation pursuant to section 52(2) in the event they did not use the rental unit for their own use as stated in the 2 Month Notice for a minimum period of six months after the effective date of the 2 Month Notice. As such, it is my opinion that there were no extenuating circumstances that excuse the Purchasers from paying the Tenant the amount required under section 51(2) of the Act.

Based on the foregoing, I find the Purchasers have not proven, on a balance of probabilities, there were extenuating circumstances under section 51(3)(a) of the Act that prevented them from accomplishing the purpose stated in the 2 Month Notice. As such, I Order the Purchasers to pay the Tenant compensation equal to 12 times the monthly rent of \$1,000.00, being \$12,000.00, pursuant to section 51(2) of the Act.

As the Tenant has been successful in the Application, I order the Purchasers to pay the Tenant \$100.00 for reimbursement of the filing fee for the Application pursuant to section 72 of the Act.

Conclusion

The Tenant is granted a Monetary Order for \$12,100.00 calculated as follows:

Item	Amount
Compensation equal to 12 Months' Rent at \$1,00.00 per month	\$12,00.00
Reimbursement of filing fee for Application	\$100.00
TOTAL	\$12, 100.00

The Tenant is provided with this Order on the above terms and the Purchasers must be served with this Order as soon as possible. Should the Purchasers fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 3, 2023

Residential Tenancy Branch