



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenant (hereinafter the “Tenant”) filed an Application for Dispute Resolution on February 2, 2022. They are seeking compensation related to the Purchaser ending the tenancy, and reimbursement of the Application filing fee.

The matter proceeded by hearing on April 11, 2023 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing, I explained the process and offered each party the opportunity to ask questions. Each party confirmed they received the prepared documentary evidence of the other.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the Purchaser ending the tenancy, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement they had with their former Landlord. The tenancy started on December 18, 2017 at \$1,650 per month. The rent amount did not increase over the course of this tenancy.

The former Landlord issued the Two-Month Notice to End Tenancy for Landlord’s Use of Property (the “Two-Month Notice”) on April 22, 2021. This was for the move-out date of June 30, 2021. On page 2 of the Two-Month Notice, the Landlord indicated the Purchaser intended in good faith to occupy the rental unit. A formal written notice accompanied the Two-Month Notice, providing the Purchaser’s instruction to the Landlord that they wanted the rental unit

vacant, “to give legal notice to the Tenant to vacate the premises. . . in accordance with the requirements of Section 49 of the Residential Tenancy Act.”

In the hearing, the Tenant confirmed that their move-out date from the rental unit was June 1, 2021. They did not challenge the validity of the Two-Month Notice in a formal dispute resolution process. At this stage, with the tenancy ended, the Tenant applied for 12 months of their monthly rent amount, being the amount owed where the Purchaser did not accomplish the stated purpose for ending the tenancy within a reasonable period after the end-of-tenancy date. This is \$19,800.

The Tenant provided that they moved to another accommodation that was approximately one block away from their former rental unit. They remained friends with a former neighbour, who let them know about “some activity in July 2021”. Because of local gossip, they were aware that the Purchaser left the country. The Tenant concluded that the tenancy ended for “vacant possession”, meaning they inferred that the Purchaser had no intention of occupying the rental unit.

Other pieces that led to the Tenant’s conclusion on vacant possession was the lack of an operating door buzzer at the building, as well as the Tenant’s ability to view the rental unit from their regular walking route. In addition, no one retrieved the original registered mail the Tenant had sent on this current dispute resolution process, to notify the Purchaser of the Tenant’s Application at the Residential Tenancy Branch.

The Purchaser presented that they did accomplish the purpose for which they had the previous landlord end the tenancy. The Purchaser travelled to another country for a family member’s funeral, then stayed there for an extended period in order to care for another family member. Part of the Purchaser’s reason for buying this rental unit was in order to downsize, and that involved greater flexibility with an ability to travel. They reiterated that they never rented

The Purchaser employed an assistant to maintain the rental unit on a regular basis during their sojourn in another country. This individual attended the hearing as a witness and spoke to the regular duties they would accomplish at the rental unit. This included monthly visits, to clean the apartment if needed, and check for mail in the building. They described the rental unit in terms of furniture belonging to the Purchaser, the presence of the Purchaser’s personal belongings. They also answered in the negative to the direct question of whether the Purchaser was renting to others.

In addition to this testimony, the Purchaser directly in the hearing clarified that they do not own any other property in the province.

The Purchaser's travel, in total, ran for a period of 14 months. In a letter they submitted in response to the Purchaser's submissions, the Tenant noted that s. 51 of the *Act* does not anticipate an end of tenancy only to have a landlord/purchaser leave a rental unit vacant and unused. The Purchaser's trip, in the Tenant's estimation, "contravenes the very clear occupancy requirements under the RTA."

Analysis

Under s. 49(5) of the *Act* a landlord may end a tenancy if a purchaser asks the landlord in writing to end the tenancy, in good faith, for their own occupancy of the rental unit.

A Tenant's compensation in these circumstances is governed by s. 51 which provides:

- (2) Subject to subsection (3), the . . . purchaser must pay the tenant . . . an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the . . . purchaser . . . 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 . . . 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 purchaser from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented . . . the purchaser 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 . . . for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Purchaser was away from the rental unit for an extended period, from July 23, 2021 to October 13, 2022, as they confirmed in the hearing. This was an extended period when they did not live in the former rental unit; however, I find for the purposes of the *Act*, the former rental unit was occupied, and the Purchaser accomplished the purpose for which they ended the tenancy.

I find there was nothing wavering on the Purchaser's reason for owning the former rental unit. They were candid about their need for downsizing, and this was in line with an ability to travel more commitment-free, factoring in what stage they were at in their life.

I find this was not a situation of ending the tenancy under the auspices of occupying the rental unit, then only turning around and re-renting to others for an increased amount of rent, which is the practice the *Act* contemplates with the purpose of s. 51 compensation.

I find for the purpose of this decision that the Purchaser occupied the rental unit in the legal sense of the word. A statutory tax scheme with a different consideration of tax implications would provide for a different consideration of “vacant possession” and I find that consideration does not enter this present situation.

I find the Purchaser here established that the rental unit was used for the stated purpose, within a reasonable period after the tenancy ended. The *Act* does not contemplate a residency requirement. I find simply the Purchaser accomplished the stated reason; therefore, I make no consideration of whether extenuating circumstances were in place.

I find the Purchaser met the burden of proof in this situation. The Tenant pointing to inconsistencies or lack of information on the family member’s death does not enter into the consideration when I am not factoring in extenuating circumstances.

For these reasons, I dismiss the Tenant’s Application without leave to reapply. Because the Tenant was not successful in this Application, I grant no reimbursement of the Application filing fee.

Conclusion

For the reasons set out above, I dismiss the Tenant’s Application, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 11, 2023

Residential Tenancy Branch