



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenant filed an Application for Dispute Resolution on August 12, 2022. They are seeking compensation related to the Landlord ending the tenancy because of a purchase of the rental unit.

The matter proceeded by hearing on May 8, 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.

At the outset of the hearing, each party confirmed their receipt of the other’s prepared evidence package. On this confirmation, I proceeded with the hearing as scheduled.

Preliminary Matter – Purchaser’s disclosure of evidence

The Purchaser provided evidence directly to the Residential Tenancy Branch on April 10, 2023. In the hearing, the Purchaser stated that they did not provide this evidence directly to the Tenant. They relied on the online portal for evidence, with the Tenant having access to that information.

As per the *Residential Tenancy Branch Rules of Procedure*, Rule 3.15 specifies:

The respondent must ensure evidence that they respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. . .[T]he respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find the Purchaser did not adhere to this rule for this hearing process. As per Rule 3.17, I exclude this evidence from consideration because the Purchaser submitted it only to the Residential Tenancy Branch. The Tenant served the Purchaser with information about this hearing – including the complete information about a respondent’s role and evidence – in September 2022 via mail. The Purchaser cannot avoid the rules of evidence in this legal proceeding that involves the Tenant’s rights, and the Purchaser’s obligations under the *Act*.

In sum, I give no consideration to evidence provided by the Purchaser in this hearing. At the outset of the hearing, I informed the parties that their testimony was a form of evidence that is on the record.

Issue(s) 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 the Tenant's Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant did not provide a copy of the tenancy agreement they had with their former landlord for this rental unit. In the hearing, they confirmed the basic facts that the tenancy started on March 31, 2020, and re-checked the rent amount that was \$3,000. The Tenant on their Application indicated the amount of \$2,500.

The Tenant moved out from the rental unit by May 1, 2022. This was after their landlord served the Tenant a Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice"). That document on page 2 indicated the conditions for a purchase were finalized, and the Purchaser asked the seller (i.e., the landlord) for vacant possession. The Tenant provided a copy of the document titled "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession" setting this out, with the Purchaser's signature on March 31, 2022.

The Purchaser in the hearing presented that they moved into the rental unit with their family by July 1, 2022. This was the whole house that previously formed the rental unit property. They never rented out any part of the house. The Landlord presented that they have four children, and never made any move to another property or home.

The Tenant presented a copy of the Facebook ad they discovered online, undated. This shows an offer for the rental unit property's basement unit, at \$1,800 per month. The Tenant stated they discovered this ad on April 4, 2022. They messaged to the owner of the ad to ask if the rental unit at that time was still available; however, the Tenant could not recall whether they received a response to this inquiry. The Tenant stated they had no information about the rental unit from July 2022 onwards.

The Purchaser in the hearing described that the ad was posted prior to their actual ownership. This was an effort at ascertaining how much rental income could be earned from the rental unit should the need arise. This was a means of the Purchaser securing financing for their rental unit property purchase. They reiterated that they never rented any part of the rental unit home. Their response to inquiries on the advertisement were that they were not renting.

Additionally, some people the Tenant had interacted with previously in the neighbourhood messaged to the Tenant that they never saw anyone living in the rental unit property.

In the hearing, the Tenant presented that a contact who was living in that area notified them that no one was living at the rental unit property. They re-read that person's message in the hearing that stated, from August 7: "I spoke with them when they moved in, they're quiet considering they have 3 kids. They moved in July 1st."

Analysis

Under s. 49 of the *Act* a Landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. There is compensation awarded in certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 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 . . . 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 of 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.
- (3) The director may excuse . . . the purchaser who asked the Landlord to give the notice from paying . . . 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, 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 onus is on a purchaser to prove they accomplished the purpose for ending the tenancy. If this is not established, the amount of compensation is 12 times the monthly rent. A purchaser may only be excused from these requirements in extenuating circumstances. This is not a question of a purchaser's "good faith" in issuing the Two-Month Notice -- that question is the proper focus when a tenant applies to challenge the actual end of the tenancy and the Tenant did not do that here.

The Tenant did not provide a copy of the tenancy agreement they had in place with their previous landlord. I accept, upon their verification during the hearing, that they paid the rent amount of \$3,000. I note the Purchaser had no means of verifying this correct rent amount, with no copy of the tenancy agreement, including any rent increases, from the Tenant.

Aside from that, I find the Tenant's own verification of messaging they had from a former neighbour confirmed that the Purchaser and their family were living in the rental unit. This confirmed the

number of people in the Purchaser's family at that time which the Purchaser in the hearing, stated was accurate.

I find there was no actual rental at the property by the Purchaser. I find with certainty that the Purchaser occupied the rental unit property the entire time since they moved in on July 1, 2022. Therefore, they accomplished the stated purpose for ending the tenancy. It was at least 6 months' duration for that purpose.

Minus this evidence to the contrary from the Tenant, I dismiss their claim for compensation under s. 51 of the *Act*, 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 outlined above, I dismiss the Tenant's claim for compensation related to the Purchaser's Two-Month Notice. This is without leave to reapply, and no compensation for the Application filing fee.

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 10, 2023

Residential Tenancy Branch