



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- 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.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The landlord acknowledged service of the tenant's Application for Dispute Resolution.

The tenant testified that she did not receive the landlord's evidence package in response. The landlord confirmed that its evidence package was only submitted to the online evidence portal and a copy was not served on the tenant. The landlord's evidence package was therefore excluded from this hearing as it was not served upon the tenant as required by the Residential Tenancy Branch rules of Procedure. Instructions on service were included in the Notice of Dispute Resolution.

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

The rental unit was a studio suite in the basement of the house. The previous owners resided in the upper portion of the house. The tenancy began on March 15, 2021. The monthly rent prior to the end of the tenancy was \$800.00. The tenancy was with the

previous owners of the property. The respondent in this application is the purchasing landlord.

On March 25, 2022, the previous owners 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 June 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 submitted a copy of the buyer notice to seller requesting vacant possession for their own use.

The tenant vacated the rental unit on April 30, 2022, one month prior to the effective date of the Two Month Notice.

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

In support of her claim the tenant submitted copies of an Airbnb listing and a real estate listing for sale of the property. The tenant submits the house was relisted for sale by the end of July 2022 and also listed for rent on Airbnb.

The landlord G.S. testified that they had a sale contract with the seller for vacant possession and they never intended to take on any existing tenancy. After the contract was signed the seller requested for them to provide notice to vacate in writing which they did. G.S. submits that they took possession of the house on July 10, 2022 and at that time both his parents-in-law and the parents of S.K. started to reside in the house. S.K.'s father had to leave for India on August 2 2022. Subsequently on August 5, 2022, G.S.'s parents in law had to return to India earlier than expected due to a medical emergency. As S.K.'s mom was left in the subject suite by herself, the landlord decided to Airbnb the house to help with mortgage payments. The property was also listed for sale for this reason but it did not sell. S.K.'s mom subsequently also left for India on October 20, 2022. On October 26, 2022, G.S.'s parents arrived to Canada from India at which time they moved into the house. G.S.'s dad returned to India on April 7, 2023 and G.S.'s mom continues to reside in the suite while the upper portion is listed on Airbnb.

In reply, the tenant submits that the Airbnb advertisement clearly lists the full house of five bedrooms and 3 bathrooms being available for rent which includes the suite portion.

The landlord submits that Airbnb allows shared accommodation which is why they included entire house in advertisement.

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.

I find the landlord has not met its burden of proving that the rental unit has been utilized for the stated purpose of ending the tenancy. The landlord emphasized that they requested vacant possession as part of the sale contract and that the Two Month Notice was issued by the seller and not the buyer. The landlord submits they only signed the Buyer Notice to Seller for vacant possession at the request of the seller after the contract was signed.

I find the above argument is something the landlord should take up with their real estate agent or the agent of the seller. At the end of the day, the landlord signed the Buyer Notice to Seller for vacant possession and the seller issued the tenant a Two Month Notice based upon that notice. The landlord therefore is responsible for carrying out the

purpose of ending the tenancy which was for a close family member to occupy the rental unit.

I find the landlord has not met its burden to establish that a close family member has occupied the rental unit for at least a 6-month period after the end of the tenancy. The landlord provided testimony of a revolving set of parents or parents-in-law occupying the property after they took possession. Aside from this vague testimony, the landlord provided no supporting evidence that the rental unit is or was being occupied by a close family member. I find that it is more likely than not that the landlord never actually intended to nor did the landlord or a close family member ever occupy the rental unit; but rather, the landlord turned the entire house into an Airbnb rental and attempted to resell the property as evidenced by the listings submitted by the tenant.

Aside from the statement that one set of parents had to return to India for a medical emergency, the landlord has not submitted any evidence that extenuating circumstance prevented the landlord from accomplishing the stated purpose for ending the tenancy.

I allow the tenant's claim and award an amount of \$9700.00, which is twelve times the monthly rent of \$800.00 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 \$9700.00. 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 11, 2023

Residential Tenancy Branch