



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC FF

Introduction

This dispute relates to the tenant's 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,
2. Filing fee.

The tenant attended the teleconference hearing, was affirmed and the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Thereafter the tenant was 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, SS (Purchaser) did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated September 28, 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 October 1, 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 July 29, 2021 (2 Month Notice). The tenant provided a registered mail tracking number in evidence, RN 665 504 321 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 October 1, 2022. I find the Purchaser was deemed duly served as of October 6, 2022, as per 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

I have amended the tenant's application from dispute code MNDCT to MNETC as that details of dispute clearly indicate the intent of the claim is for compensation under section 51(2) of the Act. I have amended the application pursuant to section 64(3)(c) of the Act.

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.

Issues to be Decided

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

Background and Evidence

The tenant stated that monthly rent was \$1,600 per month during the tenancy. 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:

☐ member of that person, intends in good faith to occupy the rental unit.

☒ 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 tenant testified that they were advised by a realtor friend that the house was listed for sale and on November 12, 2021, the tenant stated that they took 3 photos as follows:

1. 1 photo of “For Sale” sign indicating realtor name of Harry Rakhra with Century 21 with “Sold” sticker (For Sale/Sold Sign)
2. 1 photo of For Sale/Sold Sign with house in background.
3. Another photo of For Sale/Sold Sign with house also in background.

The tenant confirmed that the For Sale/Sold Sign proves that as of November 12, 2021, the Purchaser had listed and sold the rental unit property contrary to the reason listed on the 2 Month Notice and was unable to do so for at least 6 months after the effective date listed on the 2 Month Notice.

A copy of the “Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession dated July 23, 2021 was also submitted, confirming the mailing address of the Purchaser, SS.

The effective vacancy date listed on the 2 Month Notice was September 30, 2021.

Analysis

Based on the undisputed documentary evidence of the tenant 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]

Firstly, the Purchaser bears the onus to prove they used the rental unit property as indicated on the 2 Month Notice or had extenuating circumstances that prevented them from doing so. I find the Purchaser failed to provide any evidence by failing to attend the hearing. As the Act does not permit refusal of registered mail service and does deem the Purchaser served 5 days after they are sent the Hearing Package by registered mail, I find the Purchaser is unopposed to the compensation sought as they have provided no rebuttal evidence.

I find that selling the rental unit property within 3 months of September 9, 2021, the effective date listed on the 2 Month Notice, that the Purchaser must pay the tenant the entire compensation sought. Therefore, I grant the tenant 12 times the monthly rent of \$1,600 pursuant to section 51(2) of the Act, which is **\$19,200**. I also grant the filing fee of **\$100** pursuant to section 72 of the Act, for a total monetary claim of **\$19,300**.

Conclusion

The tenant's application is fully successful. The tenant has been granted a monetary order pursuant to section 67 of the Act, in the amount of \$19,300. 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 tenant 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: June 13, 2023

Residential Tenancy Branch