



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- compensation in the amount of \$6,400.00 due to tenancy ending as a result of a two, four, or twelve month notice to end tenancy, and the Landlord (the "Purchaser") has not complied with the Act or used the rental unit for the stated purpose pursuant to sections 49 and 51; and
- authorization to recover the filing fee for this application from the Purchaser pursuant to section 72.

The Tenant attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Purchaser did not attend this hearing. I left the teleconference hearing connection open until 2:10 pm in order to enable the Purchaser to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Tenant and I were the only ones who had called into the hearing.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenant testified that he served the Purchaser in person at the rental unit with a package that includes the notice of dispute resolution proceeding documents and the Tenant's documentary evidence (collectively, the "NDRP Package"). The Tenant submitted a note dated September 9, 2022 at 1:00 pm signed by a witness, LT, which indicates that LT witnessed the Tenant give documents to the Purchaser at the rental

unit. According to the Tenant, the Purchaser indicated that he was open to negotiating this matter and will read the papers given by the Tenant.

Based on the foregoing, I find the Purchaser was served with the NDRP Package in accordance with sections 88 and 89 of the Act on September 9, 2022.

Having found the Purchaser to be duly served with notice of this hearing, I directed the hearing to proceed in the Purchaser's absence.

Preliminary Matter – Amendment of Tenant's Claim

The Tenant's evidence includes a copy of his tenancy agreement and two unsigned notices of rent increase which indicate that rent was \$639.00 per month when the tenancy ended in December 2021.

The Tenant confirmed that he is seeking compensation in the amount of 12 months' rent. The Tenant confirmed that the \$6,400.00 claimed in his application was a mistake.

I find it can be reasonably be anticipated in the circumstances that the statutory compensation sought by the Tenant should be calculated as $\$639.00 \times 12 \text{ months} = \$7,668.00$ under section 51(2) of the Act. Therefore, I have amended the Tenant's claim to reflect this amount pursuant to Rule 4.2 of the Residential Tenancy Branch Rules of Procedure.

Issues to be Decided

1. Is the Tenant entitled to compensation of 12 months' rent?
2. Is the Tenant entitled to reimbursement of the filing fee?

Background and Evidence

This tenancy commenced on August 19, 2016 with the previous landlord and ended on December 15, 2021. At the time that the tenancy ended, rent was \$639.00 per month.

The tenancy had ended pursuant to a two month notice to end tenancy for landlord's use of property dated October 10, 2021 (the "Two Month Notice"). This notice had an effective date of December 31, 2021 and indicates that the Purchaser or a close family member intends in good faith to occupy the rental unit.

Included with the Two Month Notice is a buyer's notice to seller for vacant possession signed by the Purchaser dated October 7, 2021 (the "Purchaser's Notice").

The Purchaser took possession of the rental unit on January 1, 2022.

The Tenant testified that he moved from the rental unit to the unit directly below the rental unit in the same building.

The Tenant testified that in January 2022, the Purchaser commenced renovations in the rental unit. The Tenant explained that in February 2022, he was looking for work and helped the Purchaser with the renovations for two weeks. The Tenant stated that he performed tasks such as removing the carpet, prepping and scraping the floor, scraping down the textured ceiling, and taking out tiles in the bathroom.

The Tenant submitted that the Purchaser did not live at the rental unit and did not stay overnight in the rental unit at all. The Tenant indicated that no one else was living at the rental unit. The Tenant stated that he can see who comes and goes from the building through his patio and window. The Tenant described seeing the Purchaser only on several occasions between March and July 2022. The Tenant stated that the Purchaser was only at the rental unit to renovate it.

The Tenant stated that in June 2022, he saw the Purchaser and asked about the Purchaser needing a place to live when he purchased the rental unit. The Tenant stated he was told that the Purchaser did not need a place anymore and figured he could do what he wanted with the rental unit.

According to the Tenant, the Purchaser delayed the renovations until near the end of August 2022. The Tenant stated that the renovations were still not done by September 9, 2022 when he went to serve papers on the Purchaser. The Tenant stated that when the Purchaser opened the door to the rental unit, the Tenant saw that there was no flooring inside.

The Tenant stated that the Purchaser then finished the renovations and sold the rental unit on October 1, 2022. The Tenant explained that he found out the rental unit was sold from the new neighbour who moved in.

Analysis

1. Is the Tenant entitled to compensation of 12 months' rent?

In this case, I find the Two Month Notice is a notice to end tenancy issued under section 49(5) of the Act.

Section 49(5) of the Act permits a landlord to end a tenancy in respect of a rental unit if:

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I have reviewed a copy of the Two Month Notice and find that it is a valid notice to end tenancy in form and content under section 52 of the Act.

I accept the Tenant's undisputed testimony that the tenancy ended on December 15, 2021 pursuant to the Two Month Notice, and that rent was \$639.00 per month at the time that the tenancy ended.

The Tenant seeks compensation under section 51(2) of the Act, which states:

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 the landlord or purchaser, as applicable, 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.

I find the Purchaser had requested in writing for the Two Month Notice to be issued to the Tenant by signing the Purchaser's Notice.

I find the Two Month Notice and the Purchaser's Notice both confirm that the Purchaser or a close family member of the Purchaser were to occupy the rental unit.

I find the Purchaser did not attend this hearing to discharge his onus under section 51(2) of the Act to establish that he or a close family member had occupied the rental unit for at least six months after the effective date of the Two Month Notice.

Furthermore, I accept the Tenant's undisputed testimony that the rental unit was unfinished due to renovations and was not occupied between January and October 2022.

Based on the evidence presented, I do not find there were any extenuating circumstances that prevented the Purchaser or a close family member from accomplishing the stated purpose of the Two Month Notice, such that the Purchaser may be excused from paying compensation under section 51(3) of the Act.

I conclude that the Tenant is entitled to compensation of $\$639.00 \times 12 \text{ months} = \$7,668.00$ from the Purchaser under section 51(2) of the Act.

2. Is the Tenant entitled to reimbursement of the filing fee?

The Tenant is successful in this application. I grant the Tenant's claim for reimbursement of his filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenant is calculated as follows:

Item	Amount
Section 51(2) Compensation ($\$639.00 \times 12 \text{ months}$)	\$7,668.00
Filing Fee	\$100.00
Total Monetary Order for Tenant	\$7,768.00

Conclusion

The Tenant' claims for compensation of 12 months' rent and reimbursement of the filing fee are granted.

Pursuant to sections 51(2) and 72(1) of the Act, I grant the Tenant a Monetary Order in the amount of **\$7,768.00**. This Order may be served on the Purchaser, 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: June 07, 2023

Residential Tenancy Branch