



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 3 BBB HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on October 9, 2022 seeking compensation for the Purchaser via the Landlord ending their tenancy, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 1, 2023 and June 15, 2023.

Both the Tenant, the Landlord, and the rental unit purchaser (hereinafter, the “Purchaser”) attended the conference call hearing. I explained the process and the parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, and in the reconvened hearing, the parties confirmed they received the prepared documentary evidence of the others. On this basis, the hearing proceeded. I adjourned the hearing on May 1, 2023, to allow the Tenant to serve the Purchaser, who attended the reconvened hearing on June 15, 2023.

Issue(s) to be Decided

- Is the Tenant entitled to monetary compensation for the Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”), pursuant to s. 51 of the *Act*?
- Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided key details about the tenancy on their Application. The Landlord provided a copy of the recent tenancy agreement. The tenancy started in 2015. The rent as of the end of the tenancy was \$1,218.

The Landlord in the hearing reviewed the reason they served the Two-Month Notice the Tenant on May 11, 2022. This document indicated the reason, on page 2, that all conditions for a sale were finalized, the Purchaser asked the Landlord, in writing, to give this end-of-tenancy notice because the Purchaser/their family member intended in good faith to occupy the rental unit.

The Landlord in the hearing described the Purchaser wanting the rental unit empty. The Landlord described speaking to the Tenant about this, and “they were okay with leaving”, with this being the incentive for them to find their own place. As the sale proceeded, the Landlord became nervous about the Tenant actually leaving as arranged, so they served the Two-Month Notice to clarify the end-of-tenancy date.

The Landlord stated they were aware that the Landlord wanted to rent out the place eventually, after renovations. On the contract for sale and purchase (not in the evidence), the indication was that the unit should be “empty”.

In a written summary, the Landlord listed the following:

- once they, as the seller, found someone to purchase the rental unit, the Landlord asked the Tenant if they were okay leaving when the new owner took over; the Tenant replied ‘yes’ on the phone, and “this was the kick in the butt [they] need to buy a place.”
- they gave the Two-Month Notice to the Tenant “so that we both had the dates on paper that [the Tenant] needed to be out of the trailer”
- the Tenant received the final month of the tenancy rent-free.

In their evidence, the Landlord provided a copy of their May 11 email to the Tenant that attached the Two-Month Notice. The Landlord also provided a copy of the real estate site showing the rental unit property as sold on July 22, 2022.

The Tenant confirmed they moved out from the rental unit on July 31, 2022. On August 5m a friend sent them information about a Facebook marketplace post. The Tenant provided a copy of this ad, showing the asking rent amount of \$2,400 per month, with pictures of the interior of the rental unit. The Tenant described their former neighbours observing new people moving in to the rental unit. On August 14, the Tenant received a message from their former neighbour, informing them that a specifically named individual, previously unknown to the neighbour, was moving into the rental unit.

Though the Landlord described the Tenant as being agreeable to moving out as required, the Tenant submitted that they were not in agreement, and conveyed the message to the Landlord that they were wanting to stay in the rental unit.

The Purchaser provided a written account, submitted as evidence for this hearing, dated May 24, 2023. They provided the following points:

- on their first viewing of the home, they had no possession date established
- they informed the Landlord they were flexible and willing to wait until the rental unit was vacated before taking possession
- they did not issued a “Buyers Notice to Seller for Vacant Possession” document, because of “[their] belief that the tenants would be vacating the property voluntarily”
- they wanted the rental unit after vacancy in order to begin renovations – they never intended to “cause any inconvenience to the current tenants or disrupt their living arrangements”
- they did not request or insist on the eviction of the Tenant – they only wanted possession once the rental unit was vacant, in order to carry out renovations
- they suggested August 1 as the possession date, based on their belief that the Tenant would have found accommodation by that time.

The Purchaser in the hearing reviewed the above account. They reiterated that they were going to renovate, and it did not matter when it started. They began renovations immediately on August 1st, and arranged for new renters to start on September 1st.

Specific to the Two-Month Notice, the Purchaser stated: “the clause on [the Two-Month Notice] is strictly speaking not accurate.” The Landlord, in summary, also stated that “the line on [the Two-Month Notice] didn’t really indicate what was happening.”

Analysis

The *Act* s. 49 allows for a purchaser to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in the situation 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 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, as applicable, 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 the Landlord, or the Purchaser, to prove that they accomplished the purpose for ending the tenancy.

In this present scenario, I find as fact that the Purchaser did not ask the Landlord to serve the Two-Month Notice. In the hearing, the Purchaser also described the Two-Month Notice's second page indication – that they asked the Landlord to serve the Two-Month Notice – as “strictly speaking not accurate”. I find the Purchaser credible on their point that they never intended to occupy the rental unit; rather, they were explicit that they were going to renovate the rental unit, and then be renting it out to others. Additionally, the Purchaser stated there was no form/document/request such as the “Buyers Notice to Seller for Vacant Possession”.

The Landlord described the contract of purchase and sale as indicating "vacant". I find that was not a request for the Landlord to end the tenancy via Two-Month Notice. It was not an explicit instruction for the Landlord to end the tenancy.

With attention to s. 51(2), I find that, in the present scenario, the role of the Purchaser is not applicable in this situation; therefore, I exclude the Purchaser from consideration of whether they must pay compensation.

To apply s. 51 to the present scenario, the Landlord did issue a Two-Month Notice, and that is what ended the tenancy. The validity of that document is not part of my consideration, and the Tenant did not dispute the Two-Month Notice in a formal process. The simple fact is that the Landlord served the Two-Month Notice and the Tenant moved out by the end date indicated on that document. Also in line with this was the fact that the Tenant's final month in the rental unit was rent-free, which is what s. 51(1) provides for.

I find the reason indicated on the Two-Month Notice was not accomplished as indicated. I find the Landlord, who issued the Two-Month Notice -- not on the Purchaser's behalf -- must pay the Tenant the equivalent of 12 times the monthly rent. The Landlord stated this was to clarify the date for the tenancy ending; however, it does stand as a formal end-of-tenancy notice to the Tenant. That makes it valid, legal, and binding in all respects, including s. 51.

The indication on page 2, as highlighted by the Landlord, was that the Purchaser would occupy the rental unit and live there. That stated purpose was not accomplished within a reasonable period after the end of tenancy, and the Purchaser rented it to new tenants. There is no legal duty linking to the Purchaser, who never requested the Landlord to serve the Two-Month Notice.

As per s. 51(2), I order the Landlord to pay the Tenant the equivalent of 12 times the monthly rent payable. As indicated by the Tenant on their Application, this amount is \$14,616. I grant a monetary order to the Tenant for this amount.

Because the Tenant was successful in their Application, I grant the full amount of the \$100 Application filing fee to them.

Conclusion

Pursuant to s. 51 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$14,716. I provide the Tenant this Monetary Order for the reasons above. They must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Monetary Order, the Tenant may file the Order in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: July 5, 2023

Residential Tenancy Branch