



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

Under section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Tenant's September 29, 2022, application to the Residential Tenancy Branch for:

- (i) compensation because the tenancy was ended as a result of a Two Month Notice to End Tenancy, and the landlord has not used the rental unit for the stated purpose under section 51 of the Act; and
- (ii) authorization to recover the cost of the filing fee under section 72 of the Act.

Issues

- 1. Is the Tenant entitled to compensation in the amount of \$6,000.00?
- 2. Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began March 29, 2019, and ended on December 31, 2021. Rent was \$500.00 due on the first day of the month.

The Landlord submitted as evidence a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), which had an effective date of September 30, 2021. The

Notice named Purchaser NF as landlord. The reason stated on the Notice for ending the tenancy was:

- The rental unit will be occupied by the landlord or the landlord's close family member: The father or mother of the landlord or landlord's spouse.

The Landlord's agent affirmed that:

- the Landlord was not the party who issued the Notice.
- the rental unit is part of a large property with 8 houses (the Property).
- the Property was originally bought in 2010 by the Landlord. The owners on the title were Owners BT, MD, and CB, who held the Property on trust for the Landlord.
- Owner CB passed away in late June 2020.
- in early 2021, the Landlord received an offer to purchase the Property from Purchaser NF. The offer was accepted in March 2021. The Landlord submitted as evidence a contract of purchase and sale between the Owner BT, Owner MD, and Purchaser NF's holding company dated March 29, 2021, confirming this.
- in May 2021, Purchaser NF and Purchaser NF's family moved onto the Property (into a unit that is not the rental unit).
- the sale of the Property was closed on June 21, 2021. The Landlord submitted as evidence a certificate of completion dated June 21, 2021, between Owner BT, Owner MD, and Purchaser NF confirming this. At this point, Purchaser NF became the landlord of the rental unit. Purchaser NF was the one collecting rent and dealing with the Tenant during this period.
- the purchase price for the Property was provided to the lawyers on trust awaiting final transfer of title once probate could be obtained for the estate of Owner CB.
- the Notice was issued after the sale of the Property had gone through and was issued by Purchaser NF. The Notice lists Purchaser NF as landlord.
- in March 2022, Purchaser NF and Purchaser NF's family vacated the Property and demanded their funds be returned as the Landlord was unable to provide title due to problems with the Owner CB's estate. The Landlord agreed and signed a general release and provided the funds back in late March 2022. The Landlord submitted as evidence a general release and authorization to pay deposit funds agreement dated March 3, 2022, between Owner BT, Owner MD, and Purchaser NF's holding company.
- the Landlord subsequently took back possession of the Property in April 2022.

The Tenant affirmed that:

- the Tenant received the Notice on July 28, 2021.
- the Tenant vacated the rental unit on December 31, 2021, and Purchaser NF and Purchaser NF's family vacated the Property in March 2022. Therefore, even if Purchaser NF's parents moved into the rental unit, they would have left by March 2022, which would still fall short of the 6 months occupancy requirement.

Analysis

Section 51(2) of the Act states that if a tenant is given a notice to end tenancy under section 49 of the Act, a landlord or purchaser if applicable, must pay the tenant an amount that is equal to 12 times the monthly rent if:

- 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
- the rental unit is not used for that stated purpose for at least six months' duration.

In addition, according to Policy Guideline 50, the onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 of the Act or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has proven that the Landlord is not liable to compensate the Tenant under section 51 of the Act. I find this because the Landlord was not the party who issued the Notice to the Tenant and played no part in evicting the Tenant. On the Notice, Purchaser NF was named as the landlord. I note that Section 51(2) of the Act specifies that a landlord or purchaser if applicable, must pay the tenant an amount that is equal to 12 times the monthly rent if 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 the rental unit is not used for that stated purpose for at least six months' duration. As the Notice was issued by Purchaser NF rather than the Landlord, it would be Purchaser NF who evicted the Tenant. Since Purchaser NF held themselves out as being the landlord on the Notice and the tenancy was ended on the basis of the Notice, I find that Purchaser NF would be the applicable party that would be liable to the Tenant under section 51 of the Act.

Therefore, I am dismissing the Tenant's application for compensation under section 51 of the Act. The Tenant is at liberty to file a new application against Purchaser NF. I explicitly make no findings as to Purchaser NF's liability.

As the Tenant was not successful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The application is dismissed without leave to reapply.

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: July 15, 2023

Residential Tenancy Branch