



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was reconvened from hearings on March 30, 2023 and July 6, 2023 regarding the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- monetary loss or money owed pursuant to section 67; and
- authorization to recover the filing fee pursuant to section 72.

The Tenants, the respondent TSR, and GS, agent for Royal LePage, attended this reconvened hearing. TSR was represented by legal counsel SK. Also in attendance were TSR's witnesses SR and FD. SR is TSR's father and FD is TSR's brother-in-law.

Preliminary Matter – Previous Interim Decision

This decision should be read together with the interim decisions issued on March 30 and July 6, 2023.

Preliminary Matter – Service of TSR's Evidence

The Tenants acknowledged receipt of TSR's evidence. I find the Tenants were sufficiently served with TSR's evidence in accordance with section 71 of the Act. In making this decision, I have considered all of the evidence submitted by the parties.

Preliminary Matter – Removal of Royal LePage as Respondent

Based on the parties' evidence, I find Royal LePage was the selling agent that represented TSR for the purchase of the rental unit.

I accept that TSR had provided an address "c/o" or "care of" Royal LePage's address on the notice to end tenancy given to the tenants and on the buyer's notice to seller for vacant possession. However, I do not find Royal LePage to be a proper party to this dispute.

I do not find Royal LePage to have agreed to purchase any interest in the rental unit such that it may be a “purchaser” under section 49(1) of the Act. Additionally, I do not find Royal LePage was involved in the tenancy in any way such that it met the definition of a “landlord” under section 1 of the Act. I do not find Royal LePage to have acted as an agent of the owner to permit occupation of the rental unit under a tenancy agreement, nor do I find Royal LePage to have exercised any power or performed any duty under the Act, a tenancy agreement, or a service agreement in relation to the rental unit.

I conclude that Royal LePage is neither a landlord nor a purchaser under the Act, and is therefore not a proper party to this dispute. Pursuant to section 64(3)(c) of the Act, I have amended this application to remove Royal LePage as a respondent.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or money owed?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

According to the Tenants, they had rented the rental unit for approximately one year when their landlords at the time informed the Tenants that the house would be put up for sale. The landlords asked the Tenants for permission to take photographs of the rental unit to which the Tenants agreed.

The Tenants were later informed that the property had sold and the buyers would be moving in. The Tenants were served with a two month notice to end tenancy for landlord’s use of property dated August 31, 2021 (the “Two Month Notice”), which had an effective date of October 31, 2023. According to this notice, all of the conditions for the sale of the rental unit have been satisfied and the purchaser, TSR, 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. Attached to the Two Month Notice is a buyer’s notice to seller for vacant possession dated August 31, 2021 and signed by TSR (the “Buyer’s Notice”).

The Tenants moved out of the rental unit in accordance with the Two Month Notice by the end of September 2021. At the time that the tenancy ended, the Tenants' monthly rent was \$1,200.00. The Tenants submitted evidence to show that they moved into a new rental starting on October 1, 2021 with a monthly rent of \$1,700.00.

The purchase and sale of the rental unit completed on November 1, 2021. The Tenants subsequently learned that the rental unit was re-listed for sale. The Tenants submitted information obtained from a real estate website which shows that the rental unit had been sold on November 1, 2021 for \$549,000.00, and was re-sold on January 10, 2022 for \$801,000.00.

GS testified that he was the realtor who had assisted TSR with the real estate transactions. GS testified that TSR wanted to purchase a house for TSR's parents and another house for himself, his spouse, and their children. According to GS, the rental unit was intended for TSR's parents to live in. However, GS was asked to help list the rental unit for resale on December 8, 2021, because TSR's parents needed to move back to their home country due to a family member who was ill. GS confirmed that the rental unit was later re-sold.

According to TSR, he and his family moved into the rental unit on November 1, 2021 and began making improvements and upgrades to the property. TSR, his wife, and their children had intended to move into another property by December 2021. This second property was purchased shortly after the purchase of the rental unit. The intention was for TSR's parents to continue residing in the rental unit. However, on November 22, 2021, TSR's aunt became severely and terminally ill. TSR's parents decided to immediately return to their home country to care for TSR's aunt. They informed TSR that they would not be residing in the rental unit and no longer had any use for the property. As a result, TSR contacted GS about selling the rental unit. A binding contract of purchase and sale was entered into on December 10, 2021, and the transaction completed on January 10, 2022. TSR, his spouse, and their children continue to reside in the second property. TSR denied that the rental unit had been purchased for an investment purpose.

TSR submitted flight booking confirmation and passport information indicating that his parents returned to their home country in November 2021. TSR's father SR testified that they were not sure how long they would be out of the country, so they decided to sell. TSR stated that his aunt passed away 9 months later. TSR stated that his mother is still out of the country, while his father has returned to Canada and resides with different members of his family.

The Tenants acknowledged TSR's family loss, but argued that the Tenants were forced out of their home and TSR still made a huge profit in a short period of time by reselling the rental unit. The Tenants also seek damages for:

- \$500.00 increase in monthly rent payable by the Tenants
- Breach of contract, not acting in good faith
- Loss of time looking for a new place and stress
- Showing photos of the Tenants' private personal belongings

Counsel for TSR argued that there were good faith intentions for TSR's parents to occupy the rental unit, but they were unable to do so due to extenuating circumstances. Counsel argued that the remainder of the claims made by the Tenants, including claims for breach of contract and use of photographs, must be dismissed in their entirety.

Analysis

1. Are the Tenants entitled to compensation for monetary loss or money owed?

The Tenants seek compensation of (a) 12 months' rent and (b) other compensation including the increased cost of new rent paid by the Tenants, as well as damages for breach of contract, loss of time and stress for finding a new residence, and showing photos of the Tenants' private belongings when listing the rental unit for sale. I will address each of these claims below.

a. Compensation of 12 Months' Rent

I find the Two Month Notice was issued pursuant to section 49(5) of the Act, which allows 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 find that by signing the Buyer's Notice, TSR had requested in writing for the Two Month Notice to be issued to the Tenants.

Based on the evidence presented, I am satisfied that the Two Month Notice was a valid notice to end tenancy in form and content under section 52 of the Act, and that the stated purpose of the Two Month Notice was for TSR or a close family member of TSR to occupy the rental unit.

Under section 51(2) of the Act, a purchaser may be liable to compensate a tenant 12 months' rent as follows:

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.

(emphasis underlined)

In other words, the onus is on the purchaser to prove that they accomplished the purpose for ending the tenancy under section 49(5) of the Act within a reasonable time, and that they used the rental unit for the stated purpose for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

In this case, I find it is undisputed that the rental unit was not occupied by TSR or a close family member of TSR beginning within a reasonable period after the effective date of the Two Month Notice and for at least six months. I find the undisputed evidence is that the rental unit was re-sold to new buyers on January 10, 2022, less than three months after TSR took possession.

Under section 51(3) of the Act, a purchaser may be excused from paying compensation to the tenant if there were "extenuating circumstances" that "prevented" the purchaser from accomplishing the stated purpose of the notice to end tenancy, as follows:

- (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, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy describes extenuating circumstances as follows:

G. EXTENUATING CIRCUMSTANCES

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

(emphasis underlined)

I find TSR's evidence is that the intention was for his parents to reside in the rental unit, but ultimately they were unable to do so due to having to care for TSR's aunt. I find TSR provided some evidence to show that his parents left the country in November 2021. However, I find little evidence has been submitted to explain TSR's aunt's circumstances.

I find TSR acknowledged that upgrades were made to the rental unit before it was re-sold on January 10, 2022. Based on the evidence provided by the Tenants, I find the rental unit was re-sold for a substantial profit in less than three months. As a result, I am not satisfied on a balance of probabilities that the rental unit was re-sold due unforeseen circumstances relating to TSR's aunt's illness. I do not find TSR to have provided any evidence, such as photos or moving invoices, which would show that his parents had made a genuine attempt to settle into the rental unit as their new home. I also find that TSR did not provide sufficiently compelling reasons to explain why the rental unit had to be re-sold right away. Based on the foregoing, I conclude that there is insufficient evidence of extenuating circumstances to excuse TSR from paying compensation to the Tenants.

Pursuant to section 51(2) of the Act, I order TSR to pay 12 months' rent to the Tenants, or $\$1,200.00 \times 12 \text{ months} = \$14,400.00$.

b. Other Compensation

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this case, I do not find there is any basis for the Tenants' claim for damage or loss due to breach of contract. I do not find the Two Month Notice or the Buyer's Notice to be a contract between TSR and the Tenants.

I do not find the use of the Tenants' photos by TSR, which I accept would have been made publicly available when the previous owners were selling the rental unit, to be a breach of the Act, the regulations, or a tenancy agreement. Furthermore, I do not find the Tenants to have demonstrated any damage or loss arising from the use of the photos.

I accept the Tenants pay more rent than they did before and have gone through the hassle of moving to a new rental. However, I do not find these losses to have resulted from a breach of the Act, regulations, or a tenancy agreement. I find the Tenants would have incurred these costs even if TSR or a close family member did move into the rental unit for at least six months. Furthermore, I do not find it is a breach to issue a notice to end tenancy such as the Two Month Notice. In my view, the statutory compensation of 12 months' rent under section 51(2) of the Act already takes into consideration the challenges faced by tenants who are put into a similar situation as the Tenants, and shifts their costs to the landlord or purchaser who does not use the rental unit for the stated purpose of ending the tenancy.

Accordingly, I dismiss the remainder of the monetary compensation sought by the Tenants without leave to re-apply.

2. Are the Tenants entitled to recover the filing fee?

The Tenants have been partially successful in this application. I grant the Tenants' claim for reimbursement of their filing fee from TSR under section 72(1) of the Act.

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

Item	Amount
Section 51(2) Compensation (\$1,200.00 × 12 months)	\$14,400.00
Filing Fee	\$100.00
Total Monetary Order for Tenants	\$14,500.00

Conclusion

The Tenants' claims for compensation of 12 months' rent and reimbursement of the filing fee are granted as against TSR.

Pursuant to sections 51(2) and 72(1) of the Act, I grant the Tenant a Monetary Order in the amount of **\$14,500.00**. This Order may be served on TSR, filed in the Small Claims Division of the Provincial Court, and enforced as an order of that Court.

The remainder of the Tenants' claims for monetary compensation in this application are dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 25, 2023

Residential Tenancy Branch