



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking monetary compensation for the landlord's failure to comply with the *Residential Tenancy Act* or use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property, and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing, and the landlord was accompanied by the landlord's spouse and Legal Counsel. The landlord and one of the tenants each gave affirmed testimony, and the parties, or Legal Counsel, were given the opportunity to question each other and to give submissions.

The parties agree that all evidence, with the exception of a partial tenancy agreement, has been exchanged. Therefore, all evidence of the parties except the partial tenancy agreement has been reviewed and is considered in this Decision.

At the commencement of the hearing, Legal Counsel for the landlord submitted that this matter should be joined with another hearing involving the landlord, which was heard the day prior to this hearing, and the same application to join the hearings was denied by the Arbitrator. I advised the parties that doing so would be challenging a decision made by another Arbitrator. I further found that since the other matter has already been heard, I cannot join the 2 applications.

Issue(s) to be Decided

Has the landlord established that the landlord has acted in good faith and complied with the *Act* or used the rental unit for the purpose stated in a Two Month Notice to End Tenancy For Landlord's Use of Property?

Background and Evidence

The landlord testified that this fixed-term tenancy began on April 1, 2020 and reverted to a month-to-month tenancy after March 31, 2021. The landlord is not sure but believes the tenancy ended on April 30, 2022. Rent in the amount of \$4,500.00 was payable on the 1st day of each month and there are no rental arrears. On January 24, 2020 the landlord collected a security deposit from the tenants in the amount of \$2,250.00, which has been returned to the tenants, and no pet damage deposit was collected. The rental unit is the upper level of a house, and the lower level was also tenanted. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenants were served with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), and a copy has been provided for this hearing. It is dated February 1, 2022 and contains an effective date of vacancy of April 30, 2022. The reason for issuing it states: 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. Also provided is a Contract of Purchase and Sale. The landlord testified that the contract fell apart and the landlord had a back-up purchaser 15 days later. The tenants received compensation by not paying the last month of rent.

Before the tenants moved in, the landlord gave the tenants a quote for a project to build a house for the tenants. The quote is dated May 27, 2019. After the tenants moved into the rental unit the parties entered into a contract to build a home on property that the tenants had purchased. The tenants were aware that they were moving into the rental unit until their new home was built, which takes 8 months to a year. The new home had quite a few delays and it took an extra 2 or 4 months.

At the time that the Notice was served, the landlord had entered into a conditional offer to sell the rental home, but the deal fell through sometime after accepting it, at the last minute. The landlord entered into a second contract to sell, and the landlord believed the purchaser would be moving in. The Contract of Purchase and Sale states that the premises are to be vacant. The sale was completed; conditions were removed April 5, 2022 after the Notice to end the tenancy was issued. The landlord had offered to allow the tenants to remain; it was beneficial to let them live there for free until May 14, 2022 so the tenants could complete some finishings on the new home, but the tenants denied the offer.

The tenant (DH) testified that the tenants moved into the rental unit on April 1, 2020 and in June, 2020 the tenants put in an offer to buy a piece of property and in December entered into a contract with the landlord to build a house.

In August or September, 2021 the landlord listed the rental house for sale. There were numerous showings and the landlord got an offer in February, 2022 and wanted the tenants to sign a mutual agreement to end the tenancy, and indicated that if the tenants signed it, they could stay in the rental unit until mid-May. The Residential Tenancy Branch told the tenants that if they signed it, they lose all protection, so the tenants didn't sign it.

The landlord gave the tenants a Two Month Notice to End Tenancy saying all subjects were removed. The tenants didn't receive any subject removal document or letter stating that the purchasers would be moving in. The document attached to the Notice is a purchase agreement, but only the first part and Clauses 4 to 7, but omitted Clause 3. The tenants had no evidence that the deal fell apart. February 21 was the subject removal date, and a condition states that the tenants will vacate on or before the completion date. That cannot be a subject in a sale agreement or part of the deal.

The tenants got the Notice and scrambled to get their new house done. On February 18 the tenants found out that the deal had fell apart, and only had 15 days to dispute the Notice, which only left 4 days to do so. The landlord was building the tenants' house, and wonders what would have happened if the tenants had disputed the Notice. So the tenants proceeded to get out by April 30. The tenant's husband had to take a lot of time off work, some as vacation time and some unpaid leave. Their house was not complete.

The landlord talks about a back-up offer, but that's another offer entirely. Subject removals had to do with the sale of the purchaser's home and April 5 was the date for subject removals, and completion on June 15. The tenants had to leave by April 30, and the tenant transferred their house insurance from the rental unit to the new house.

The landlord didn't tell the tenants that the deal fell through. If the landlord had rescinded the Notice in writing and re-negotiated, the tenants would have remained in the rental unit until July 1. The Notice was based on the first offer. Subjects were not removed and there was no notice from the buyer. It was untrue, and given before subjects were removed.

The tenants were aware that the landlord wanted to sell after 18 months of the tenancy, but if the landlord sold it before the 18 months, he would have to pay capital gains. The tenants were going to move into the new home when it was completed, but that was

delayed by COVID. The tenant's husband was going to finish the floor. There was no conversation between the parties that the rental home would not be sold until the new home was complete.

The tenants received an email on February 18, 2022 from a realtor advising that the first Contract of Purchase and Sale for the rental home did not materialise. The tenant also received a text message from the landlord and a copy of a completed Mutual Agreement to End Tenancy. The landlord said that if the tenants signed it, the landlord would allow an extra 2 weeks, to mid-May, 2022 but only if the tenants signed the Mutual Agreement, which the tenants did not sign.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

Section 44(c) of the *Residential Tenancy Act* has no prescribed form for a mutual agreement, nor any specifics on requirements. The construction contract was a mutual agreement once the tenants' new home was complete. The insurance on the new home began on April 30, 2022 and can only be received once occupancy is permitted. It was mutually agreed that when the build is done and was ready to move into the tenants would vacate. The email in 2019 shows that, and the landlord was allowing them to live there till their home was completed. The landlord put it up for sale in a hot market in September. The tenants agreed, and since there is no prescribed form, it qualifies as a mutual agreement.

The entire situation is a money grab by the tenants, with no reason for them to do this. Even if relying on the Two Month Notice to End Tenancy For Landlord's Use of Property, effective April 30, 2022, and per Section 51 of the *Act*, the director may excuse the landlord or the purchaser. The landlord sold the rental property and accomplished the stated purpose. The buyers gave a written request to move in on April 2, 2022.

The landlord is a lay person and didn't understand the consequences of issuing the Notice prior to an unconditional sale, and the Residential Tenancy Branch recommended that it was done appropriately, as long as the landlord can remedy it. The purpose was to sell, and it was not a long time or unreasonable delay.

The landlord's Legal Counsel refers to Residential Tenancy Policy Guideline 50. The landlord in good faith wanted to sell and did build a new home for the tenants. All conditions were met before the effective date of the Notice.

SUBMISSIONS OF THE TENANTS:

The effective date of vacancy in the Notice was April 30, 2022, with no purchase agreement until April 1, 2022. If the landlord had given the Notice at the appropriate time, the tenants could have stayed. The landlord's Legal Counsel states 15 days, but the tenant doesn't understand where that comes from. The Notice to end the tenancy was based on the February 7 offer without conditions being lifted, and there were several showings. The 15 days was the difference between the possession dates of the 1st offer and second offer, but was not 15 days, but 7 weeks. The 15 days was the difference between the possession dates of the 1st and 2nd offers. The day after the tenants moved out, the parties did a walk-through, and the sold sign was up on May 1. The tenants had no idea that the house had sold. The landlord never said he made a mistake, or renegotiate, except providing a Mutual Agreement, which was prior to the issuance of the Notice, but the tenants never had a date when their new house would be completed.

This is about accountability. The tenants' new house was clearly not ready. The inspection failed, with deficiencies, fire separation issues, lack of smoke detectors, and only had 1 kitchen sink, not a full kitchen, or gas. The tenants also house the tenant's mother and a disabled son. The tenants did the best they could, and the tenant's husband took 7 weeks off. The New Home Warranty document wasn't complete until July 28, 2022.

Analysis

Where a tenant makes such an application, the onus is on the landlord to establish that the landlord has complied with the *Act* in good faith in ending the tenancy.

I have reviewed all of the evidentiary material of the parties. It is very clear that the landlord did not comply with the *Act* by waiting to serve the Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice) after all conditions for the sale had been satisfied. The first Contract of Purchase and Sale is dated February 7, 2022 which sets the completion date of May 31, 2022 and possession on June 2, 2022, vacant and free from any tenancies, as a condition. The second Offer to Purchase is dated April 1, 2022, closing on June 15, 2022 and possession on June 16, 2022. The landlord testified that all conditions were removed April 5, 2022 after the Notice to end the tenancy was issued.

Legal Counsel submits that pursuant to my authority under the *Act*, I may excuse the landlord from failing to comply with the *Act* because the landlord is a lay person and didn't understand the consequences. I also consider that the landlord checked the box in the Notice that states: "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.” I’m sure the landlord read that, but seems to have ignored it. I am not satisfied that the failure to comply because the landlord is a lay person and didn’t consider the consequences demonstrates extenuating circumstances that prevented the landlord from complying. The only extenuating circumstance is that the landlord didn’t consider the consequences for not acting in good faith.

Legal Counsel for the landlord submits that the email in 2019 shows that the tenants had mutually agreed to end the tenancy when the tenant’s house was completed. Perhaps so, but the landlord issued the Notice before the house was completed.

I agree with the tenant that “vacant possession of tenants” cannot be a subject in a sale agreement or part of the deal. That is not enforceable under the *Residential Tenancy Act*.

Legal Counsel for the landlord also submitted that this application is a money grab by the tenants. Perhaps it is, but that is likely the case for many tenants who make a similar application since tenants are learning about the current legislation. The legislation requires that the landlord have good faith intent, without an ulterior motive. I am satisfied that the landlord had the intent of selling the rental unit, but jumped the gun.

The *Residential Tenancy Act* states:

49 (5) A landlord may 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.

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 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.

(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.

In this case, there is no doubt that the landlord did not accomplish the stated purpose for ending the tenancy, given that the conditions for the sale of the rental home were not satisfied at the time the Notice was given. The landlord testified that he had a "back-up purchaser" 15 days later. I am not satisfied that it was a "back-up" because the new purchase agreement was not made as soon as the first offer, but made at a later date. Since the first offer didn't materialise, the house simply remained for sale until a new purchaser was located, not a back-up offer.

I find that the tenants are entitled to compensation in the equivalent of 12 times the monthly rent of \$4,500.00, or \$54,000.00.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenants as against the landlord in the amount of \$54,100.00. The landlord must be served with the order, which may be filed for enforcement under the *Court Order Enforcement Act*.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$54,100.00.

This order is final and binding and may be enforced.

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: September 17, 2023

Residential Tenancy Branch