



Dispute Resolution Services

Page: 1

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 tenant seeking monetary compensation for the landlords' failure to comply with the *Residential Tenancy Act* or act in good faith in ending the tenancy for the landlords' use of the rental property; and to recover the filing fee from the landlords for the cost of the application.

The tenant and both named landlords attended the hearing. One of the landlords and the tenant each gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the landlords have complied with the *Act*, and in good faith accomplished the stated reason for ending the tenancy with a Two Month Notice to End Tenancy For Landlord's Use of Property?

Background and Evidence

The landlord testified that this month-to-month tenancy began on June 1, 2016 and ended on July 8, 2022. Rent in the amount of \$810.00 was payable on the 1st day of each month and there are no rental arrears. The landlords purchased the rental property in June, 2016, and the tenant was residing in the rental unit at that time. The landlords received a security deposit in the Statement of Adjustments in the amount of

\$400.00, all of which has been returned to the tenant. No pet damage deposit was collected. The rental unit is a basement suite and the upper level was also tenanted.

The landlords served the tenant with a Two Month Notice to End Tenancy For Landlord's use of Property, a copy of which has been provided as evidence for this hearing. It is dated May 12, 2022 and contains an effective date of vacancy of July 31, 2022. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse. A second box has been selected in the form of the Notice which 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. It also names the purchasers.

The landlord further testified that the rental home was sold and the sale completed on July 27, 2022. The buyer requested that the landlords give the Notice to end the tenancy. A copy of the first of 6 pages of the Contract of Purchase and Sale has been provided for this hearing. An Addendum/Amendment has also been provided, which removes a person from the contract and adding 2 different purchasers to the contract. It also states that "The seller will deliver 2 month notice to both the upper and lower tenants for vacant possession of the home on the completion date in accordance to the residential tenancy act." Also provided is a Notice of Condition Waiver / Declaration of Fulfillment (Contract of Purchase and Sale), which states: "upon final condition removal the seller will deliver 2 months written notice to both upper and lower tenants for vacant possession of the home on the completion date in accordance to the rental tenancy act." The landlords were landlords at that time, and the landlords fulfilled all obligations under the legislation.

The tenant was compensated the equivalent of 1 month's rent.

The tenant testified that the landlords did not go about this in good faith and the landlords were vague about who would be moving in. Before all of this started the tenant looked for months for a new place to rent. A few weeks before, the tenant told the landlords that they might have to compensate the tenant 12 months' rent, and the landlords said they would look into it. Then the landlords said that the new owners would have to pay, and that the tenant should drop the application or it might bring trouble to the tenant.

The tenant didn't know who was moving in, and got thrown under the bus by 7 people, including the realtor.

Analysis

Where a tenant makes an application for compensation under the *Act* for the landlord's failure to act in good faith, the onus is on the landlord to establish that the landlord has acted in good faith and used the rental unit for the purpose contained in the Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice).

In this case, it appears that the realtor did not do his or her due diligence in serving the Notice with the request in writing from the purchaser to issue the Notice. Generally, the realtor would prepare a form of notice indicating that the purchasers requested that the landlord give the Notice to end the tenancy because the purchaser or close family member intends in good faith to occupy the rental unit. The landlords also made an error in the Notice by selecting 2 recitals.

The *Residential Tenancy Act* states:

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.

In this case, I am satisfied that the purchaser asked the landlords to give the Notice. The seller has no control over who moves into the rental unit. Therefore, I find that the landlords named in this application are not liable for the compensation.

Since the tenant has not been successful with the application, the tenant is not entitled to recover the filing fee from the landlords.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety 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: September 28, 2023

Residential Tenancy Branch