



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "*Act*") for:

- a monetary order for damage or compensation under the *Act*, sections 51 and 67; and
- authorization to recover her filing fee for this application from the purchaser pursuant to section 72.

The tenant attended the hearing but no one appeared on behalf of the purchaser. I kept the teleconference line open from the time the hearing was scheduled, plus an additional fifteen minutes, to allow the purchaser the opportunity to call. The teleconference system indicated that only the tenant and I had called into the hearing. I confirmed the correct call in number and participant code for the hearing I had been provided. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that she served the purchaser with the notice of dispute resolution package on November 30, 2018 by registered mail. The tenant confirmed delivery by providing a copy of the Canada Post tracking slip. The tenant testified that the purchaser bought the rental unit where the tenant formerly rented. The tenant testified that she obtained the address for the purchaser by ordering a title search for her former rental unit. The tenant submitted a copy of the title search report for the property. The purchaser's name and address on the title report matched the name and address to whom the tenant had served the notice of dispute resolution package. I find that the purchaser was duly served with the notice of dispute resolution package in accordance with section 89 of the *Act*. Section 90 of the *Act* provides that documents served by mail are deemed to be served five days after mailing. Since the tenant has mailed the notice

of dispute resolution package on November 30, 2018, I find that the package was deemed to have been served five days later, being December 5, 2018.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation damage or loss under the Act pursuant to sections 51 and 67?

Is the tenant entitled to recover her filing fee for this application from the purchaser pursuant to section 72?

Background and Evidence

The tenant testified and submitted evidence that she had resided in the rental unit for sixteen years and paid a monthly rent of \$790.00 at the end of her tenancy.

The tenant testified that in approximately August 2017, her landlord listed the rental unit for sale. The tenant testified that multiple investors viewed the rental unit and informed the tenant that she would have to pay a higher rent if she wanted to remain in the property after the sale of the rental unit.

The tenant testified that a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") was posted on the door of her rental unit on September 25, 2017. The tenant submitted a copy of the Two Month Notice as evidence.

The Two Month Notice stated the following reason to end the tenancy:

All 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.

The Two Month Notice included an attached document which stated:

I/we (or my spouse, my/our child/children, my/our parent(s) intend in good faith to occupy the residential premises I/we am/are purchasing under the Contract of Purchase and Sale dated September 19, 2017.

All subjects have been removed and I/we hereby request that you as landlord give the tenant(s) of the premises a notice under the *Residential Tenancy Act*, ending the tenancy and requiring the tenant(s) to vacate the premises by 1:00 pm November 30, 2017.

The document was dated September 17, 2017 and it was signed by the purchaser as 'buyer'.

The tenant testified that she moved out of the rental unit pursuant to the Two Months Notice and that she moved into another rental unit in the same building on November 24, 2017. The tenant paid \$1,250.00 per month rent in the new rental unit. The tenant submitted into evidence a copy of the tenancy agreement relating to this new rental unit.

In 2018, a flood damaged the new rental unit and the tenant moved to another rental unit in the same building. The tenant pays \$1,200.00 per month rent for the new rental unit. The tenant also provided a copy of this new tenancy agreement.

The tenant testified that a neighbour of her original rental unit advised her that the rental unit was vacant for two months after the sale and then a couple then moved into the apartment. The tenant testified that the neighbour told her that this couple are still residing in the apartment. The tenant testified that the neighbour told her that the new occupants of the property have now received a Two Month Notice to End Tenancy for Landlord's Use of Property from the purchaser. However, the tenant did not provide a witness statement from the neighbour or the current occupants of the property.

Analysis

This application involves consideration of the applicable sections of the *Act* dealing with the termination of tenancy by the landlord for the purchaser's use of the property.

The relevant sections of the *Act* are provided below as the legislation was written and in force at the time the tenants were issued the Two Month Notice. Recent legislative changes to these sections of the *Act* are not retroactive.

Section 49 of the *Act* stated in part as follows:

49(2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*
(a) *not earlier than 2 months after the date the tenant receives the notice...*

Section 51 of the Act stated, in part, as follows:

51(1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

...

(2) *In addition to the amount payable under subsection (1), if*
(a) *steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*
(b) *the rental unit is not used for that stated purpose **for at least 6 months beginning within a reasonable period after the effective date of the notice,***

*the landlord, or the purchaser, as applicable under section 49, **must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.***

[My emphasis added]

Since this Two Month Notice was issued on September 17, 2017, the previous version of section 51(2) applies and the maximum award is limited to an amount equal to two times the monthly rent.

Based upon the purchaser's correspondence attached to the Two Month Notice and the title reports, I find that the purchaser is the owner of the rental unit. Furthermore, based on the purchaser's correspondence attached to the notice, I find that the purchaser asked the former landlord in writing to deliver the Two Months Notice.

Based upon the tenant's unchallenged testimony and evidence, I find that the purchaser waited two months before anyone occupied the property. While a two month delay in occupying the property is a significant delay, there was no evidence presented in this

matter to establish that the purchaser's delay in occupying the property was not a reasonable period of time in contravention of section 51(2) of the *Act*. In the absence of evidence, I am not satisfied that the purchaser did not occupy the property within a reasonable time of the effective date of the Two Month Notice.

In addition, I am not satisfied that the tenant has produced adequate evidence to prove that the purchaser has not used the property for the stated purpose for at least a six months period of time as required by section 51(2) of the *Act*. The stated purpose of the Two Month Notice was so that the purchaser, or the purchaser's close family, could occupy the property. The tenant has not submitted adequate evidence to establish that, on the balance of probabilities, the purchaser, or the purchaser's close family, did not occupy the property.

The only evidence the tenant has submitted in support of this contention is the tenant's description of her former neighbour's testimony. The tenant did not produce the neighbour as a witness or even produce a written statement from the neighbour. The tenant merely testified as to what she says that her neighbour told her.

Furthermore, even if the neighbour's testimony is accepted, the neighbour does not provide any evidence that the new couple residing at the property is not a close family member of the purchaser.

The tenant argues that I can infer that the new couple is not a close family member because the new occupants have now been served a Two Month Notice to End Tenancy for Landlord's Use of Property. However, I do not find that this notice proves that the occupants are not close family members of the purchasers. It is possible that purchaser let close family member reside in the property and now the purchaser wants to occupy the property herself. I do not find that the issuance of the new notice proves that the current occupants are not close family members.

I find that that tenant has not produced sufficient evidence to establish that, on a balance of probabilities, that the purchaser did not issue the Two Month Notice for the stated purpose on the notice.

Accordingly, I dismiss the tenant's application for compensation pursuant to section 51(2) of the *Act*.

In addition, since the tenant has not been successful in this matter, I dismiss the tenant's request for reimbursement of the filing fee.

Conclusion

I dismiss the tenant's application for compensation pursuant to section 51(2) of the *Act* without leave to reapply.

I dismiss the tenant's request for reimbursement of the filing fee 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: February 8, 2019

Residential Tenancy Branch