



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants attended the hearing and were given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenants and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenants provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on November 23, 2020 to the address for service for the landlord set out in the tenancy agreement, a copy of which was submitted; the documents are deemed received by the landlord under section 90 of the *Act* five days later, that is, on November 28, 2019. The tenants submitted as evidence a copy of the receipt for mailing.

The tenants provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the tenants served the landlord with the Notice of Hearing and Application for Dispute Resolution on November 28, 2019.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, I do not reproduce all details of the submissions and arguments here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The tenants provided undisputed testimony as the landlord did not attend the hearing.

The tenants claimed that the landlord did not occupy the rental unit for the purpose stated on the Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) within a reasonable time after September 1, 2019 and accordingly, they were seeking twelve months' rent as compensation ($\$1,950.00 \times 12 = \$23,400.00$) under the provisions of section 51(2). The tenants also request reimbursement of the filing fee of \$100.00.

The tenants testified they began renting a condo from the landlord on September 1, 2018 for rent of \$1,950.00 payable on the first of the month and submitted a copy of the tenancy agreement. The tenants provided a security deposit to the landlord at the beginning of the tenancy which was returned to the tenants when they vacated.

The landlord served the tenants with a Two Month Notice by posting on June 29, 2019 with an effective date of September 1, 2019. The reason for the Two Month Notice indicated on the form is:

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 the individual's spouse).

The tenants testified that they moved into another condo in the same building when they vacated. They became suspicious of the landlord's intentions when they observed that the parking area connected to the unit remained unoccupied.

The tenants testified they learned from public online records that the landlord listed the unit for sale on September 10, 2020; they submitted a copy of the MLS listing. They testified that they searched MLS public records and learned that the landlord sold the property on October 29, 2020.

The tenants stated their belief that it was the landlord's intentions all along to evict them, so he could sell the unit. They testified to their belief that the landlord never intended to occupy the unit.

Analysis

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

Section 49 provides in part as follows:

49 (2) Subject to section 51 [...], 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 not earlier than 2 months after the date the tenant receives the notice...

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The tenants testified that they believed the landlord had "good faith" when they were served with the Two Month Notice and intended to occupy the unit. Hence, they accepted the Two Month Notice and vacated as requested.

Section 51 provides in part as follows (emphasis added):

*(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*

(a) 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

(b) the rental unit is not 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 the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit 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 accept the tenants uncontradicted testimony supported by a copy of the MLS listing that the landlord advertised the unit for sale on September 10, 2019 and sold the unit on November 23, 2020.

The onus is on the tenants to establish their claim under section 51(2) that steps have not been taken, within a reasonable period after September 1, 2019, to accomplish the stated purpose for ending the tenancy, that is, to have the landlord or the landlord's close family member move in to the unit, or that the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Policy Guideline # 50, Compensation for Ending a Tenancy provides guidance for determination of issues under section 51(2), stating, in part, as follows [emphasis added]:

Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section

49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Considering the evidence submitted by the tenants in support of their testimony, the Act and the Guideline, I find the tenants have presented enough evidence to meet the burden of proof on a balance of probabilities to establish their claim under section 51(2), that is, that the rental unit was not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Considering all the evidence and the burden of proof on a balance of probabilities, I find that the landlords' Two Month Notice for intended occupation to have been created solely for the purpose of getting the tenants to leave.

As explained above, I find the tenants have established their claim under section 51(2). Accordingly, pursuant to the provisions of section 51(2), I award the tenants an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement, that is \$23,400.00, ($\$1,950.00 \times 12 = \$23,400.00$).

As the tenants were successful in their claim, I award the tenants reimbursement of the filing fee in the amount of \$100.00.

I therefore grant the tenants a monetary order of \$11,260.00 calculated as follows:

ITEM	AMOUNT
Section 51(2) one month rent x 12 (\$1,950.00 x 12 = \$23,400.00)	\$23,400.00
Reimbursement of filing fee	\$100.00
TOTAL	\$23,500.00

Conclusion

I grant a monetary order in favour of the tenants in the amount of \$23,500.00.

The tenants are provided with a monetary order in the above terms and the landlords must be served with this order as soon as possible. Should the landlords fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: April 07, 2020

Residential Tenancy Branch