# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- compensation pursuant to section 51(2) of the Act; and
- compensation for monetary loss or other money owed pursuant to sections 7 and 67 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's support person, the purchaser of the rental unit/respondent (the Purchaser), and the Purchaser's agent (the Agent), all of whom provided affirmed testimony. The Purchaser and Agent acknowledged service of the Notice of Dispute Resolution Proceeding Package from the Tenant, including a copy of the Application and the Notice of Hearing, and both parties acknowledged receipt of each other's documentary evidence. As a result, the hearing proceeded as scheduled and I accepted the documentary evidence before me from both parties for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the Act.

Issue(s) to be Decided

Is the Tenant entitled to compensation pursuant to section 51(2) of the Act?

Is the Tenant entitled to compensation for monetary loss or other money owed pursuant to sections 7 and 67 of the Act?

Background and Evidence

There was agreement between the parties that the Tenant was served with a Two Month Notice to end Tenancy for Landlord's Use of Property (the Two Month Notice) by their previous landlord, by registered mail, on approximately April 30, 2019, as the Purchaser, who is the Respondent in this matter, requested in writing that one be served on the basis that they or their close family member intended in good faith to occupy the rental unit. There was also no dispute that the Tenant vacated the rental unit by the effective date of the Two Month Notice, July 31, 2019, that rent was $1,560.00 per month at the time the tenancy ended, or that the purchaser or their close family member failed to occupy the rental unit after the Tenant vacated and instead demolished the rental unit. As a result, the Respondent and their Agent agreed that the Tenant is entitled to the $18,720.00 in compensation sought pursuant to section 51(2) of the Act.

The Tenant also sought $900.00 in moving costs, $7,560.00 in loss suffered due to an increase in rent at their new rental unit, charged at $630.00 for twelve months, and recovery of the $1,095.00 security deposit and the $250.00 pet damage deposit paid to their new landlord. The Tenant stated that they had lived in the rental unit for 9 years and as a result, had built strong ties with their neighbours and community. The Tenant stated that as a result, the move was very difficult for them and their child. The Tenant also stated that they are a single mother and a pet owner, which made it difficult and stressful for them to find affordable rental accommodation that met their needs on only two months notice.

The Tenant stated that it is clear from the documentary evidence before me from themselves and the Purchaser, that the Purchaser was never intending to occupy the rental unit or to have it occupied by a close family member and was instead always intending to demolish the rental unit. As a result, the Tenant argued that Two Month Notice was served in bad faith in breach of section 49(5)(c)(i) of the Act. The Tenant argued that had a proper Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (a Four Month Notice) been served, they would have had up to one year to find and secure more suitable and affordable accommodation as the Landlord did not even apply for a demolition permit until September 24, 2019, possession of which is a pre-requisite for serving a Four Month Notice, and the rental unit was not in fact demolished until July of 2020. As a result, the Tenant argued that they would therefore not have had to pay the additional $630.00 in increased rent at their new rental unit during that period, and sought $7,560.00 in compensation ($630.00 x 12) from the Purchaser as a result.

The Tenant stated that they also suffered a loss in the amount of $900.00 for the cost of movers, plus the payment of the $1,095.00 security despot and the $250,00 security deposit to their new landlord, and sought recovery of these amounts from the Purchaser pursuant to sections 7 and 67 of the Act. In support of their arguments the Tenant submitted an invoice in the amount of $736.31 for movers, letters of support from neighbours confirming that the rental unit was never occupied after the Tenant vacated, a copy of their new one year fixed term tenancy agreement (signed July 4, 2020, and indicating a monthly rent amount of $2,090.00), as well as numerous photographs of the property.

Neither the Purchaser nor the Agent disputed the timeline for application of the demolition permit or demolition of the rental unit provided by the Tenant in the hearing. Instead the Purchaser and the Agent argued that the Purchaser was also a victim as they had been misled by their real estate agent into believing that the Two Month Notice was the proper notice to be served. The Purchaser also denied requesting that the landlord serve the Two Month Notice in bad faith, as they truly believed that this was the correct notice and stated that it would have been to their benefit to have had the rental unit tenanted until much closer to demolition. They also argued that they were simply deferring to their real estate agent in terms of proper procedure for ending the tenancy.

In addition to the Purchaser’s denial that the Two Month Notice was served in bad faith, the Agent argued that the Tenant is not entitled to compensation for damage or loss as a result of the Purchaser’s failure to use the rental unit for the purpose stated in the Two

Month Notice above what is set out in section 51(2) of the Act. In support of this position the Agent referred to previous decision by arbitrators with the Residential Tenancy Branch (the Branch) wherein such findings were allegedly made; however, no copies of these previous decisions were provided for my review.

Analysis

As there was no dispute between the parties that the Tenant was entitled to $18,720.00 pursuant to section 51(2) of the Act as the purchaser did not use the rental unit for the stated purpose set out in the Two Month Notice, and no extenuating circumstances under section 51(3) existed, I therefore grant the Tenant's claim for this amount.

The Tenant also sought $900.00 for moving costs, $7,560.00 in loss suffered due to an increase in rent at their new rental unit, and recovery of a $1,095.00 security deposit and $250.00 pet damage deposit paid to their new landlord.

While I appreciate the Agent's position that there are previous decisions from the Branch wherein other arbitrators have declined to award additional compensation or loss on top of the amount set out in section 51(2) of that Act, none of these decisions were provided for my review and consideration by the Purchaser or the Agent. As a result, I have no way of knowing why the arbitrators in those cases declined to grant the additional compensation sought and whether or not the facts of those cases were similar in nature to the facts of the case before me. Further to this, I am not in agreement with that position and pursuant to section 64(2) of the Act, I am not bound by law to follow previous decisions by arbitrators with the Branch or the lines of reasoning employed by the arbitrators who heard and decided those matters, as every case must be decided on the merits of the case as disclosed by the evidence admitted.

In my opinion, the requirement for compensation under section 51(2) to be paid to a tenant is not predicated on any need for the tenant to have suffered a loss. Instead, I find that it is a statutory requirement that a tenant be paid compensation in an amount equal to twelve times their monthly rent if the landlord or purchaser, as applicable, has not taken steps, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or 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 and no extenuating circumstances exist for failing to have done so.

As section 51(2) contains no requirement for a tenant to have suffered any loss in order to be awarded the statutory compensation, I therefore find that this compensation is not in place of any and all loss suffered by a tenant who has complied with a notice to end tenancy served pursuant to section 49 of the Act which is found to have been served in bad faith or without the requisite grounds to have done so. As a result, I also find that there is no bar, statutory or otherwise, which prevents tenants from also seeking compensation for loss suffered in addition to the compensation set out under section 51(2) of the Act, provided they can establish the following:

- a breach by the landlord or purchaser, as applicable, of another section of the Act;
- a loss as a result of the breach;
- the value of the loss suffered; ,and
- that they acted reasonably to mitigate their loss as set out under section 7 and Policy Guidelines 5 and16.

Having made this finding, I will now turn to the Tenant's claims for monetary compensation for loss suffered as a result of the Purchasers breach of section 49 of the Act. The Tenant argued that the Purchaser breached section 49(5)(c)(i) of the Act when they requested that the landlord serve the Two Month Notice knowing that neither they nor their close family members intended to occupy the rental unit and instead planned to demolish the rental unit, which would have required a different notice to end tenancy under the Act, a longer notice period, as well as possession of all permits and approvals required by law to demolish the rental unit. The Tenant pointed to documentary evidence before me from the Purchaser showing that they did not even apply for a demolition permit until September 24, 2019, and there was no dispute between the parties that the rental unit was not demolished until July of 2020.

Although the Purchaser and the Agent denied that the Purchaser had breached section 49(5)(c)(i) of the Act by requesting the Two Month Notice be served in bad faith, I do not agree. Section 49(5) of the Act states that 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.

In my mind, this is not a case where the Two Month Notice was initially served in good faith in compliance with section 49 of the Act, and for reasons other than exceptional circumstances, such as a change of plans or a changing of their mind, the purchaser did not follow through with occupancy of the rental, a situation which I find would be duly covered by the compensation set out under section 51(2) of the Act. Instead I find that the Purchaser had the landlord and former owner of the rental unit serve the Tenant with a Two Month Notice in bad faith, knowing full well that they intended to demolish the rental unit instead of occupying it themselves or having it occupied by a close family member. Although the Purchaser and their Agent argued that the Purchaser is a victim of misinformation from their realtor, and was therefore not acting in bad faith, I do not accept this argument. It is abundantly clear from the documentary evidence before me from both parties, including a copy of the Contract of Purchase and Sale, emails and other correspondence between the Purchaser and their realtor, a land survey and engineering report, a construction agreement for a residential home, and other invoices, that the Purchasers intention was always to demolish the home. I therefore do not accept any argument by the Purchaser or their Agent that the Purchaser truly thought that a Two Month Notice on the grounds they or their close family members intended in good faith to occupy the rental unit was the proper notice to be served.

The Tenant provided a copy of an email between themselves and the selling agent dated June 1, 2019, wherein they attempted to avoid eviction by offering to rent the entire home from the Purchaser, not just the rental unit, and the selling agent reiterated that the Purchaser or their realtor had advised them in response to this inquiry that the Purchaser intended to reside in the rental unit. Translated initial correspondence between the Purchaser and their realtor dated February 9, 2019, shows that the Purchaser was looking to buy a home for demolition and the Contract of Purchase and Sale which predates the issuance of the Two Month Notice clearly indicates that the Purchaser is planning to apply for a construction permit. A copy of a construction agreement for a residential home, signed on May 30, 2019, was submitted for my review and consideration and translated correspondence between the Purchaser and their realtor on May 31, 2019, clearly shows that the Purchaser was aware that their intentions to build a home conflict with the grounds stated for ending the tenancy on the Two Month Notice and that they were concerned about their personal responsibility to compensate the Tenant for having not complied with the stated grounds for ending the tenancy, should the Tenant choose to seek such compensation from them. Further to

this, the conversation is clearly a demonstration that the Purchaser knew that the improper notice had been served.

Based on the above, I find that the Purchaser not only knew at the time they requested that the landlord serve the Two Month Notice, that they were not intending to occupy the rental unit or to have it occupied by their close family member as the planned to demolish the rental unit but that they also denied the Tenant's subsequent request to rent the entire home instead of being evicted pursuant to the Two Month Notice, with full knowledge that they had served a the Two Month Notice for an improper purpose and were therefore likely responsible to compensate the Tenant for having done so under section 51(2) of the Act.

Given the above, I am satisfied that the Purchaser acted in bad faith when they requested in writing that the Two Month Notice be served by the Tenant's landlord and that they therefore breached section 49(5)(c)(i) of the Act as they never intended in good faith to occupy the rental unit or to have it occupied by a close family member. Even if they had intended to occupy the rental unit using any reasonable interpretation of the term "occupy", which I am not satisfied they did, the Two Month Notice would still have been served in bad faith as the Purchaser had an ulterior motive for ending the tenancy with the Two Month Notice, demolition of the rental unit and construction of a new home in its place. I also find it probable that the Landlord chose to serve the Two Month Notice rather than wait to serve the Four Month Notice, as it would be faster and would not require them to have all the permits and approvals required by law to demolish the rental unit prior to serving the notice to end tenancy.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I am satisfied that the Tenant would not have had to move, or would not have had to move so suddenly, if they had not been served with the Two Month Notice as a result of the Purchasers improper request to the landlord that one be served. I therefore find that the Tenant should be entitled to recovery of the associated moving costs. Although the Tenant sought $900.00 in moving costs, the invoice submitted shows a cost of only $736.31. I am satisfied based on common sense and ordinary human experience that this amount does not represent more than a reasonable amount for the services

rendered. As a result, I find that the Tenant mitigated their loss as required by the Act and Policy Guidelines 5 and 16 by attempting to rent the entire home from the Purchaser instead of moving and by selecting a moving company that charged a reasonably economic rate for the services rendered. As a result, I award the Tenant $736.31 for moving costs. As no evidence was submitted or presented by the Tenant during the hearing regarding the additional $163.69 in moving costs, I dismiss this portion of the claim without leave to reapply.

I will now turn my mind to the Tenant's claim for loss suffered as a result of increased rent. During the hearing the Tenant stated that the rental unit was not demolished until July of 2020, which neither the Purchaser nor the Agent disputed. A copy of the Tenant's new tenancy agreement was submitted for my review showing monthly rent due in the amount of $2,090.00, which I am satisfied represents $630.00 more per month than rent at the rental unit prior to the end of the tenancy. Documentary evidence before me from the Purchaser also indicates that a demolition permit was applied for on September 24, 2019. Based on the above, I find that the earliest date upon which the Purchaser could have served a proper Four Month Notice, which I find to be the proper notice to end tenancy to have been served in this case, was September 24, 2019, provided the permit was issued the same day. As a result, the earliest date that the tenancy could lawfully have been ended by way of a Four Month Notice, was January 31, 2020. As a result, I agree that the Tenant should be entitled to compensation in the amount of $630.00 per month, for each additional month that they should have had access to the rental unit as set out above.

As neither party raised arguments regarding compensation under section 51(1) of the Act, I have assumed that the Tenant was properly provided with this compensation by their former landlord. If not, the Tenant remains at liberty to seek this compensation from them. As a result, I find that the Tenant is entitled to compensation from the Purchaser in the amount of $3,780.00, charged at $630.00 per month for the period commencing August 1, 2019, and ending on January 31, 2020. Although the Tenant sought compensation for additional months, I dismiss the remainder of that claim without leave to reapply as I have already found above that the Purchaser would likely have been entitled to lawfully end the tenancy as early as January 31, 2020, by way of a Four Month Notice.

Although the Tenant also sought compensation for a $1,095.00 security deposit and a $250.00 pet damage deposit paid to their new landlord, I find that this is not in fact a loss which has been truly suffered by the Tenant as these amounts are currently held by their landlord in trust, meaning that these amounts are not the property of the Landlord

and in fact remain owed to the Tenant at the end of their tenancy, provided they comply with the requirements of their tenancy agreement and the Act. As a result, I dismiss this portion of the Tenant's claim without leave to reapply.

Based on the above and pursuant to section 67 of the Act, I find that the Tenant is entitled to a Monetary Order in the amount of $23,236.31.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$23,236.31**. The Tenant is provided with this Order in the above terms and the Purchaser must be served with this Order as soon as possible. Should the Purchaser 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: September 23, 2020

Residential Tenancy Branch