



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for a monetary order in the amount of \$26,500.00 12 times the monthly rent due to the purchaser failing to comply with the reason stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 18, 2021 (2 Month Notice) and to recover the cost of the filing fee.

The tenant, MP (AKA: MS) and the previous landlord/seller BS and counsel for the BS, PM (counsel) attended the teleconference hearing. All participants were affirmed except for counsel who has already sworn an oath when called to the BC Bar. The hearing process was explained, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that they received the landlord's documentary evidence and that they had the opportunity to review that evidence prior to the hearing. Counsel stated that they did not receive the tenant's documentary evidence, which the tenant could not recall serving. As a result, the tenants' documentary evidence was excluded in full pursuant to RTB Rule 3.15, as it was not served on the respondents as required and at a minimum of 14 days prior to the hearing.

Regarding service on JST, the tenant provided a registered mail tracking number, which has been included on the cover page of this Decision for ease of reference. According to the Canada Post registered mail tracking website, the tenant mailed JST the application and Notice of Hearing on December 24, 2021. JST failed to pick up the registered mail and it was eventually returned to the sender as “unclaimed”. Pursuant to section 90 of the Act, documents sent by registered mail are deemed served 5 days after they are mailed. As a result, I find purchaser JST was deemed served as of December 29, 2021. As purchaser JST failed to attend the hearing, I consider this application unopposed by purchaser JST.

Preliminary and Procedural Matters

As one of the tenants is known by two first names, MP and MS, I have amended the application pursuant to section 64(3)(c) of the Act to reflect both names, with one being an AKA (also known as).

Counsel confirmed that they were not representing the purchaser, JST (purchaser) at the hearing. I have removed landlord BS from the application pursuant to section 64(3)(c) of the Act as I find that landlord BS is not responsible for whether or not the purchaser complied with the reason stated on the 2 Month Notice. As a result, the only respondent remaining is the purchaser, JST.

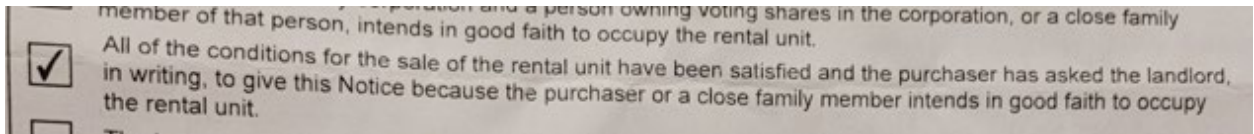
The tenant confirmed their email address at the outset of the hearing and stated that they understood that the decision and any orders would be emailed to them. This Decision will also be sent by regular mail to the respondent purchaser.

Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

There is no dispute that the tenants accepted the 2 Month Notice to End Tenancy for Landlord’s Use of Property dated March 18, 2021 (2 Month Notice). The reason stated on the 2 Month Notice is:



The tenant alleges that the purchaser sold the rental property within the 6-month period that the purchaser was required to occupy the rental property in good faith.

Counsel confirmed by way of documentary evidence that the purchaser JST assigned the sale of the property as of June 1, 2021, the extended completion date of the amended Contract of Purchase and Sale (Contract) to ASK and that as of November 29, 2021, a subsequent Land Title Search document shows that the Title of the property was changed into another name, ZTA-J.

Counsel took no position on whether JST or ASK was liable for the 12 month compensation in this application and did not oppose landlord BS being removed as a respondent.

Monthly rent was \$2,200.00 per month during the tenancy.

Analysis

Based on the undisputed documentary evidence from counsel for BS and the testimony of the former landlord, BS, their counsel and the tenant, parties provided during the hearing, and on the balance of probabilities, I find the following.

There is no dispute that JST requested that the former landlord issue a 2 Month Notice on their behalf. I find that the Act does not provide for the purchaser, JST to assign the 2 Month Notice to another purchaser and as a result, I find JST to be liable in this matter.

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

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

- (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.**

[emphasis added]

As purchaser JST failed to attend the hearing, JST has not presented any evidence to rebut any of the testimony or documentary evidence before me. In addition, JST has failed to provide any evidence to support extenuating circumstances under the Act. Therefore, I find that by assigning the purchase to ASK as of June 1, 2021 that purchaser JST is liable under the Act to pay the tenants 12 months' compensation for failing to comply with the reason stated on the 2 Month Notice, which was to occupy the rental unit for at least 6 months from May 31, 2021, the corrected effective vacancy date on the 2 Month Notice.

I find the tenants' application is fully successful and are entitled to **\$26,400.00** in compensation from purchaser JST, comprised of 12 times the monthly rent of \$2,200.00 pursuant to section 51(2) of the Act.

As the tenants' application was fully successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find the tenants have established a total monetary claim of **\$26,500.00** comprised of \$26,400.00, which is 12 times the \$2,200.00 monthly rent, plus the \$100.00 filing fee.

Conclusion

The tenants' application is fully successful.

I find the purchaser, JST failed to use the rental unit for the stated purpose and instead assigned the purchase of the property to ASK, contrary to the 2 Month Notice and that under the Act you cannot assign a 2 Month Notice to another purchaser.

The tenants are granted a monetary order pursuant to section 67 of the Act, in the amount of \$26,500.00 as indicated above. This order must be served on the purchaser, JST and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the tenants and will be sent by regular mail to the purchaser, JST.

The monetary order will be emailed to the tenants only for service on the purchaser, JST.

Should the purchaser, JST fail to pay the monetary order once served upon them, they could be held liable for all costs related to enforcement of the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 19, 2022

Residential Tenancy Branch