Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IWAASA HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNETC, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on January 10, 2023 concerning an application made by the tenants seeking monetary compensation for the purchaser's failure to accomplish the stated purpose for ending the tenancy set out in a Two Month Notice to End Tenancy for Landlord's Use of Property; and to recover the filing fee from the purchaser for the cost of the application.

Both tenants attended the hearing, one of whom gave affirmed testimony. However, the line remained open for in excess of 10 minutes prior to hearing any testimony and no one for the purchaser joined the call.

The tenant testified that the purchaser was served with the Notice of Dispute Resolution Proceeding by registered mail on September 4, 2022 to the address of the purchaser indicated on a Land Title document, a copy of which has been provided for this hearing. A Canada Post tracking document has also been provided showing that the item was accepted at the post office on September 4, 2022, but the "recipient is not located at the address provided" and the item was returned to the sender. The Land Title document indicates that the address of the purchaser is in Winnipeg, which is the address that the registered mail was sent to.

The tenants had filed a previous application and were advised to re-apply because the tenants had served the purchaser by serving a property management company. A copy of a letter to the Residential Tenancy Branch from the property management company has been provided for this hearing, dated June 21, 2021 stating that the company has no relationship with the tenants or previous or current owner of the subject property. The tenants were advised to obtain the Land Title document and serve the landlord at the address thereon.

The *Residential Tenancy Act* states that:

> **89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
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> > (a) by leaving a copy with the person;
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> > (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
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> > (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> >
> > (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
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> > (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
> >
> > (f) by any other means of service provided for in the regulations.

I also refer to Residential Tenancy Policy Guideline #12 – Service Provisions, which states, in part:

> 6. SERVICE OF DOCUMENTS ON AN INCORPORATED COMPANY OR SOCIETY
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> Service on a landlord that is an incorporated company or society should be made by serving a copy at the place where the landlord conducts business as a landlord, as provided in the Legislation.

In this case, the previous landlord gave a Two Month Notice to End Tenancy for Landlord's Use of Property effective November 1, 2020 stating that the buyer or a spouse or children or parents of a family corporation intend in good faith to occupy the rental property. Also attached is a Buyer's Notice to Seller for Vacant Possession Therefore, I find that the tenants are not required to serve the Notice of Dispute Resolution Proceeding to an address at which the person carries on business as a landlord.

The tenants have provided evidence of having served the purchaser by registered mail on September 4, 2022, which is deemed to have been served 5 days later, and I am

satisfied that the purchaser has been served in accordance with the *Residential Tenancy Act.*

Issues to be Decided

Have the tenants established that the purchaser has failed to accomplish the stated purpose for ending the tenancy?

Background and Evidence

The tenant testified that this fixed-term tenancy began on May 1, 2017 and reverted to a month-to-month tenancy after April 30, 2018. The tenants vacated the rental unit on October 15, 2020. Rent in the amount of $1,100.00 was payable on the 1st day of each month and there are no rental arrears. On April 29, 2017 the landlord collected a security deposit from the tenants in the amount of $550.00 as well as a pet damage deposit in the amount of $550.00, both of which have been returned to the tenants. The rental unit is a basement suite, and the upper level of the home was occupied by the landlord at the time with the landlord's spouse. A copy of the tenancy agreement has been provided as evidence for this hearing.

On August 25, 2020 the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided for this hearing. It is dated August 25, 2020 and contains an effective date of vacancy of November 1, 2020. The reason for issuing it 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. Attached to it is a document entitled Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession, signed digitally by an individual person (DI) with a printed name of a company (IHI). It states that the Buyer(s) (or one or move of the spouse, children, and parents of the Buyer(s), or, in the case of a family corporation (as defined in the *Residential Tenancy Act*), voting shareholders of the Buyer(s) intend in good faith to occupy the property.

The tenant further testified that a text message was received from former neighbours saying that the new owners were showing the rental unit to several prospective tenants. The tenants have also provided rental advertisements, each 3 pages long, and the first

shows that the rental unit is available for rent on December 1, 2020. The second shows that the advertisement was posted on Craigslist on November 10, 2020 and updated on November 27, 2020.

Analysis

The *Residential Tenancy Act* does not permit a purchaser to re-rent after asking the seller to give notice to end the tenancy for the use of the purchaser or a close family member:

> 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
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>> (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
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>> (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.

Considering the advertisements, one of which was posted days after the tenancy ended, I am not satisfied that the purchaser had any intention of occupying the rental unit, nor a close family member of the purchaser.

I am satisfied that the tenants have established a monetary claim in the amount of 12 times the monthly rent, or $13,200.00.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the $100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the purchaser in the amount of $13,300.00.

This order is final and binding and may be enforced.

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: January 14, 2023

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Residential Tenancy Branch