



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on July 7, 2022. They are seeking compensation related to the Purchasers (the “Purchaser”) ending the tenancy, and the Application filing fee.

The matter proceeded by hearing on March 28, 2022 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

At the outset of the hearing, each party confirmed their receipt of the other’s prepared evidence package. On this assurance, the hearing proceeded as scheduled.

Issues to be Decided

Is the Tenant entitled to compensation for the Two-Month Notice to End Tenancy for Purchaser’s Use of Property, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement in their evidence and the Purchaser did not dispute any of the information contained therein. The tenancy began on January 1, 2021. The Tenant paid a rent amount of \$2,000 on the first of each calendar month. The Tenant rented the upper part of the home at the rental unit

property. There was a lower separate unit at the home, having 3 bedrooms, a living room and a kitchen.

The Purchaser, via the landlord previously in place, issued the Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice"). This set the end-of-tenancy date for February 28, 2022. The conditions of a sale were satisfied, and the Purchaser asked the Landlord to give notice because the Purchaser intended in good faith to occupy the rental unit.

The Tenant disputed the validity of the Two-Month Notice in a formal process. The Tenant moved out from the rental unit on April 2, 2022. This was two days before the scheduled hearing date of April 4, 2022.

The Tenant presented a number of other factors in their life that at the time made moving difficult, forcing them to move to another province. They suggested, via their Landlord, that the Purchaser could occupy the lower unit at the rental property home; however, their Landlord verified that the Purchaser wanted the whole house.

After their move-out, the Tenant learned the Purchaser was making renovations at the rental unit property. They were aware of the Purchaser living at a separate domestic address, *i.e.*, not that of the rental unit. The Tenant was aware the Purchaser had not occupied the rental unit home for at least 5 months, from the period of April 2022 through to October 2022. They made two more visits to the rental unit, in June and July, revealing no one living at the rental unit. Their witness presented audio of their interaction with the neighbours, and the Purchaser, at the Purchaser's separate home (*i.e.*, not the rental unit) in October 2022.

The Tenant brought a witness to the hearing. This person lived in the same city as the former rental unit. They presented that in May 2022 they visited to the Tenant's former rental unit "many times" to check for mail at the rental unit. No one was present to answer the door. To the witness, it looked like the house was not occupied and there were no cars parked at the rental unit property. On May 24 the witness asked the neighbours if they knew about the new owners moving in; these neighbours noted a lot of renovations.

In summary, the Tenant presented that the Purchaser did not occupy the rental unit as indicated in the Two-Month Notice. They confirmed this in October 2022 when they spoke to the Landlord directly (as in their audio recording).

The Landlord presented their summary of the situation in the hearing, and made reference to material they provided as evidence.

They reviewed the terms of the sale, with its completion date of March 1, 2022, and scheduled possession date of March 2, 2022. They submitted they did not present any hardship to the Tenant at all by ending this tenancy, with the Two-Month Notice served to the Tenant via their Landlord. They received \$3,000 extra as compensation for the Tenant to stay until April 3, 2022.

They presented evidence that they paid for the mortgage at the rental unit property, and utilities were all registered and paid for from March 1, 2022 onwards. The document “Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession” in their evidence contains the wording: “The Buyer(s). . .intend in good faith to occupy the Property.”

They received the keys for the rental unit property on April 3, 2022, and have been occupying it ever since. In the hearing, they stated a common definition of the word “occupy” that they feel applies in this situation: “to take or hold possession of” or “to hold or keep for use” or “to possess.” In more casual terms, they submitted that the concept does not mean they have to sleep at a particular address in order to occupy it.

They began renovations, involving painting inside and outside, new windows and doors, a complete kitchen renovation, tiling throughout kitchen & bathroom, complete bathrooms renovation, laundry room renovation. These renovations finished “[o]n or about the end of August of 2022.”

In the hearing, the Purchaser presented that they resided at their separate address (*i.e.*, not the rental unit) through to August 2022 because they had paid the rent at that address in advance. They continued to rent at this separate address because of the extensive renovations at the rental unit property. They reiterated that they had possession of both of these properties, and were not renting the rental unit to anyone else.

Analysis

Under s. 49 of the *Act* a purchaser (via a landlord as per s. 49(5)(c)) may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. The Purchaser here issued the Two-Month Notice, via the Tenant's landlord, for this reason.

A separate subsection – s. 49.2 – covers the situation where a landlord wishes to renovate or repair the rental unit. The *Act* s. 49(6) also provides for a landlord ending a tenancy for a non-residential use, such as demolition or converting the rental unit to a different purpose.

There is compensation awarded in certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 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 . . . an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if . . . the purchaser . . . does not establish that
 - (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
 - (b) the rental unit . . . 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.
- (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 . . . purchaser from
 - (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
 - (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.

The onus is on the Purchaser to prove that they accomplished the purpose for ending the tenancy and that they used the rental unit for its stated purpose for at least 6 months. Failing this, the Purchaser must present that extenuating circumstances prevented this.

The original Two-Month Notice has the indication that "the purchaser has asked the landlord to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." I find the Purchaser's stated intention was that they would occupy the whole of the rental unit home.

The Purchaser presented that they occupied the rental unit property. They rely on a common definition as set out above. The *Act* however, observes a unique purpose of occupy, and this is because of the separate sections set out immediately above provide for a person's other use of the rental unit. Because there are separate provisions to end a tenancy for non-residential use such as a renovation, "occupy" means "to occupy for a residential purpose." The other definitions of "occupy" presented by the Landlord here are inconsistent with the intent of s. 49 of the *Act*.

I find a renovation in the rental unit is a different use than occupying it for residential purposes. That is not the equivalent of leaving the unit vacant or unused and certainly separate from re-renting the unit again; however, I find the stated purpose for ending the tenancy was not accomplished. As set out above, s. 51(2) applies in this situation.

In line with this, these were not simple cosmetic renovations taking a few weeks. I accept the Tenant's evidence that the Landlord was not occupying the rental unit for a residential purpose for the period of five months. The Landlord has not offset the burden to prove otherwise. Moreover, the Landlord took up primary residence in their separate address for which they were paying rent.

If the Landlord took up residence in the rental unit in August 2022, that was not beginning within a reasonable period after the tenancy here ended. I find extensive renovations in the rental unit are not extenuating circumstances that prevented their residency changing. The renovations were not something unexpected and they were entirely within the Landlord's own control.

To be clear, this is a strict application of s. 51(2) of the *Act*. Though the Tenant described the hardship and financial difficulties caused by the end of this tenancy, that is not the basis for the Tenant's claim here. The Tenant's circumstances after the tenancy ended or caused by the end-of-tenancy notice, as hard as they were, are irrelevant to my consideration.

For these reasons, I find the Landlord has not presented sufficient evidence to show they occupied the rental unit, as stated in the Two-Month Notice. This means the Tenant is entitled to compensation for a breach of the *Act* by the Purchaser. I grant the Tenant compensation in the amount specified by s. 51(2), the equivalent of twelve times the amount of the monthly rent of \$2,000. This is \$24,000.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the Tenant was successful in their claim, I find they are entitled to recover the \$100 filing fee from the Purchaser.

Conclusion

Pursuant to s. 51(1) and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$24,100. The Tenant is provided with this Order in the above terms, and they must serve it to the Purchaser as soon as possible. Should the Purchaser fail to comply with this Order, the Tenant may file the Order in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: April 5, 2023

Residential Tenancy Branch