



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord attended the hearing, and the landlord was represented by an agent, JD. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an affirmation to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

The landlords' agent acknowledged being served with the tenant's Notice of Dispute Resolution Proceedings and attachments, however she denied receiving any of the tenant's evidence. The tenant acknowledges she did not provide a copy of her evidence to the landlords with the Notice of Dispute Resolution Proceedings package. As it was not exchanged with the landlords, the tenant's documentary evidence was excluded from consideration in this decision.

The tenant also denied receiving the landlord's evidence package. The landlord called a witness, process server GA, who testified that he attached a copy of the landlord's evidence to the tenant's door at 3:30 p.m. on May 12, 2022. Photos of the packages

taped to the tenant's residence were provided as evidence. I find the landlord's evidence was served in accordance with section 88 of the Act on May 15, 2022, the third day after being posted to the tenant's residence. The landlord's documentary evidence would be considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlord?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

The parties agree that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use by her previous landlord on December 20, 2021, with an effective (move out) date of February 28, 2022. The reason for ending the tenancy was:

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.

Subsequent to moving out, the tenant says the landlord has not occupied it for a period of 6 months, saying the unit was sold to another purchaser by mid-June 2022.

The landlord's agent states that the immediate condition of the rental unit was uninhabitable, and they had to remediate a leak in the crawlspace and mold in the attic before moving in. The landlord "MS" started living in the rental unit with his mother and father and provided utility bills from the city to indicate the property remained in the landlord's name up until at least August 30, 2022.

The landlord's agent agrees that the property shows as being sold to a new purchaser on June 15, 2022, however the landlord "MS" and his parents occupied it and continued to occupy it until September 28, 2022. Health issues prevented "MS's" father from continuing to remain occupying the unit and he subsequently left the country, returning to India.

The subject removals for the sale of the property were removed on June 15, 2022 and on that date, the MLS system shows the property as sold. The landlord and the next purchaser signed a further addendum on June 22, 2022 which states that "MS

established residency at the aforementioned address from July 22 2022 to 28 September 2022 and that “The seller will pay the rent according to the market value to the buyer until the seller found the new property. This term must be mutually agreed by both parties”.

Analysis

Residential Tenancy Policy Guideline 50 [compensation for ending a tenancy] was written to provide guidance to landlords and tenants in addressing issues related to compensation under section 51 of the Residential Tenancy Act. It states at part C:

C. ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD’S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).

...

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

In this matter, there are 2 issues to be determined. First, is whether selling the rental unit within the 6 month timeframe triggers the compensation requirement under section 51(2). The second is whether the landlord has provided sufficient evidence to satisfy me it was occupied by him and his family for the 6 month period.

The parties agree that the rental unit was sold on June 15, 2022, three and a half months after the effective date stated on the landlord’s notice to end tenancy (February 28 2022). The intention of section 51(2) is to protect tenants from being displaced due to the landlord’s failure to occupy the rental unit for personal use or the use of a close

family member. If I am to accept that the landlord became the tenant of the subsequent purchaser of the rental unit and remained occupying the unit until September 28th, then the provisions of section 51(2) should not be invoked. In other words, the selling of the property within the 6 month period does not, in itself, entitle to tenant to the compensation under section 51(2) as long as the landlord remains occupying it, whether as an owner or as the next purchaser's tenant.

The next question is whether the landlord has discharged his onus to satisfy me he accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice. For the reasons below, I find he has not.

The parties agree that the condition of the rental unit was not in great shape when the landlord took possession of it, and both acknowledged the leak in the crawlspace. I can accept that the landlord took the steps to repair it before taking the steps to move in. However, I find insufficient evidence to satisfy me the landlord or his family actually occupied the rental unit between February 28th and June 15th or any time thereafter.

The landlord did not provide a single photograph of him or his family actually occupying the unit as a living space. No pictures of bedrooms, kitchen or bathroom with normal signs of daily life were supplied into evidence. No furnished rooms or living spaces were shown for me to review. Given that the tenant's application was filed in August, 2022 while the landlord was supposedly still occupying the unit, it would be reasonable that the landlord would gather photos to corroborate their version of events that they were living in it.

The landlord provided an invoice from a moving company dated March 15, 2022, however the invoice does not contain any contact information for the company. There is no phone number, no place of business address, email, website or company logo to confirm the legitimacy of the invoice provided. For that reason, I give little weight to that document.

Next, the landlord provided a tax return and an outpatient note from the hospital with the rental unit's address to prove residency. While these documents corroborate the fact that the landlord used the property for mail to be sent, these documents are insufficient proof that the landlord or his family actually occupied the address. Proving that he lives at a place is different from proving that he has mail delivered to it. Likewise, the utility bills and BC Hydro bills in the landlord "MS's" name are not necessarily indicative of

“MS” or his family occupying the unit. As the owner of the unit, “MS” is required to have those utilities in his name. Had the landlord provided invoices such as cable TV or internet, I would be more satisfied that the landlord and his family were living in the unit.

The landlord’s agent testified that the conditions for the sale of the unit were removed on June 15, 2022 and that the property is considered sold as of that date. Despite this, the parties entered into an addendum on June 22, 2022 which appears to establish residency from July 22, 2022 to September 28, 2022 by means of a payment of rent to the new purchaser.

I find it unreasonable that the parties entered into a post-sale addendum to “establish residency” for the selling landlord. There is no requirement for the purchaser of the property to enter into this agreement after the property has been sold. If “MS” and the new purchaser were to formally enter into a fixed term tenancy agreement from the July 22, 2022 to September 28, 2022, a copy of the tenancy agreement should have been provided as evidence for this hearing. It is clear to me that the purpose of this post-sale addendum was to prevent the tenant from seeking the compensation she is entitled to under section 51(2).

The landlord’s agent testified that the full contract of purchase and sale between the landlord and the new purchaser was not provided to me due to confidentiality of the purchaser’s information. This information could have been redacted from the evidence under Rule 3.7.1 of the Residential Tenancy Branch Rules of Procedure and supplied to the tenant and me for this hearing. I find that without this document, the landlord’s claim that they remained in the unit between July 22, 2022 and September 2022 is unsubstantiated. The landlord did not provide the documents required to corroborate their claim that the utilities remained in the landlord’s name after the unit was sold to the next purchaser.

I find the landlord has not discharged their onus to provide sufficient evidence to satisfy me he accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after

the effective date of the notice. I find the tenant is entitled to compensation in the amount of 12 times the monthly rent [$\$1,490.00 \times 12 = \$17,880.00$].

Neither party provided a copy of the notice to end tenancy for me to review, so I turn to the document, "teller occupied property – buyer's notice to seller for vacant possession" which indicates the following:

"for the purpose of giving the Tenant Notice under section 49 of the Residential Tenancy Act, the Buyer's address is [omitted for privacy] and the buyers hereby consent to the sellers including the Buyer's name and such addresses on the Tenant Notice for the purpose of Section 49(7) of the Residential Tenancy Act".

As such, I find both landlords named on the tenants application are jointly and severally liable to compensate the tenant.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$17,980.00.

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: May 30, 2023

Residential Tenancy Branch