



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On February 20, 2020, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing; however, neither Landlords attended the 36-minute teleconference hearing. All in attendance provided a solemn affirmation.

The Tenants advised that they served a Notice of Hearing and evidence package to each Landlord by registered mail on March 4, 2020 (the registered mail tracking numbers are on the first page of this Decision). The tracking history indicated that both packages were available for pickup on March 9, 2020 and had not been accepted as of March 16, 2020. They advised that this is a valid address for service to the Landlords and they cited an email, dated September 27, 2019, from the property management company that was managing the rental unit which confirmed this. In addition, they had previously sent mail to the Landlords at this address on October 25, 2019 and the Landlords had signed to receive that package. A copy of the signed Xpresspost tracking document was submitted as proof of service. Based on this undisputed testimony and evidence, and in accordance with Sections 89 and 90 of the *Act*, I find, on a balance of probabilities, that this was the current service address for the Respondents. As such, I am satisfied that the Landlords were deemed to have received the Notice of Hearing and evidence packages five days after they were mailed on March 4, 2020.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to monetary compensation in the amount of 12 months' rent based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenants advised that the tenancy started on or around August 7, 2018 and the tenancy ended when they gave up vacant possession of the rental unit on June 30, 2019. Rent was established at \$1,300.00 per month and was due on the first day of each month. A security deposit of \$650.00 and a pet damage deposit of \$650.00 were also paid.

They stated that the Notice was served on or around May 22, 2019 and the reason the Landlords checked off on the Notice was that "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The Landlords indicated on the Notice that the effective end date of the tenancy was July 31, 2019.

The Tenants advised that the Landlord sent an email to the property management company, dated June 1, 2019, indicating that he would be moving into the rental unit likely for August 1, 2019. This email was submitted as documentary evidence. They stated that the rental unit was vacant in August, September, and October 2019. They returned to the rental unit on August 7, 12, 15, 23, 29, 2019 and on September 17 and 26, 2019 and took pictures, through the windows, of the inside of the rental unit. They stated that the rental unit was furnished and they strategically placed items in specific places at the end of the tenancy so that they could easily identify if they had been

moved or not. They stated that nothing had changed in any of the times they visited the rental unit.

They submitted that the neighbours alerted them to someone moving into the rental unit on or around the beginning of November 2019, but this person was not one of the Landlords, nor a close family member of the Landlords. They did not provide any evidence to support this claim because it was “hard to get proof of someone else living there” and they did not want to bother these people. Furthermore, the property management company would not divulge any information.

They stated that the Landlords had listed the rental unit for sale within the first week of the Tenants moving in, but the Landlords took the listing down after the Tenants had made their initial Application for compensation on or around September 2019.

As it is their position that the Landlords did not use the rental unit for the stated purpose for at least six months after the effective date of the Notice, they are owed compensation in the amount equivalent to twelve months’ rent, or **\$15,600.00**, pursuant to Section 51(2) of the *Act*.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenants’ claim for twelve-months’ compensation owed to them as the Landlords did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on May 22, 2019 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

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.

(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 landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
(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.

With respect to this situation, I also find it important to cite Policy Guidelines # 2A and # 50. Policy Guideline # 2A clarifies the six-month occupancy requirement stating that “The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).”

Furthermore, Policy Guideline # 50 notes that “A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.”

Finally, this Policy Guideline outlines the following about extenuating circumstances: “An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

Regarding this Application, what I have to consider is whether the Landlords followed through and complied with the *Act*, and used the rental unit for the stated purpose for at least six months after the effective date of the Notice. I note that the Tenants have provided pictures as documentary evidence from multiple visits in August and September 2019 which they claim support their testimony that the Landlords have not occupied the rental unit. There is also their testimony that they were informed by neighbours that a new tenant had moved in on or around November 2019; however, they did not submit any evidence of this.

While the Tenants have not provided a significant amount of evidence to support their claim that the Landlords did not occupy the rental unit within a reasonable period of time after the effective date of the Notice, or that they rented it to a new tenant within six months after the effective date of the Notice, I do find it important to note that the property management company did send an email dated September 27, 2019 indicating that the service address for the Landlords was in a different province. Furthermore, there is evidence that the Landlords were served a package to this same address in a different province on October 16, 2019 and there is proof that the Landlords signed for this package on October 25, 2019.

In my view, if the Landlords had moved into the rental unit as per their email dated June 1, 2019 and pursuant to the reason on the Notice, it is not clear to me why a different service address for the Landlords, other than the dispute address, would have been provided. Moreover, I find that the fact that they signed to receive a package sent to their address in a different province supports the finding that the dispute address, more likely than not, is not an address that the Landlords were residing at.

When reviewing the totality of the undisputed evidence before me, I am satisfied on a balance of probabilities that the Landlords did not use the rental unit for the stated purpose within a reasonable period of time after the effective date of the Notice, for at least six months. As the Landlords did not occupy the rental unit for at least six months

after the effective date of the Notice, I am satisfied that the Landlords failed to meet any of the requirements to use the rental unit for the stated purpose as per the *Act*.

As there have been no unforeseen or extenuating circumstances that prevented the Landlords from using the rental unit for the stated purpose within a reasonable period of time after the effective date of the Notice, for at least six months, I am satisfied that the Tenants have substantiated their claim that they are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$15,600.00**.

As the Tenants were successful in this claim, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

12 months' compensation	\$15,600.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$15,700.00

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$15,700.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: July 2, 2020

Residential Tenancy Branch