



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELWELL HOLDINGS LIMITED and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on April 30, 2020, in which the Tenants claimed monetary compensation from the Landlord in the amount of \$101.00 including recovery of the filing fee.

The hearing of the Tenants' Application was scheduled for teleconference on August 31, 2020 and continued on October 13, 2020. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

By Interim Decision dated August 31, 2020, I amended the Tenants' Application to correctly name the Landlord.

Additionally, I Ordered the Tenants to amend their Application to claim compensation for 12 months' rent pursuant to section 51(2) of the *Act* as well as to prepare and serve a Monetary Orders Worksheet. When the hearing reconvened on October 13, 2020, the Tenants indicated they had made this amendment, however a copy of the Amendment was not in evidence before me. The Landlord's representatives did not oppose the

hearing of the Tenants' claim for compensation based on section 51(2); as such, I proceeded to hear this claim.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord pursuant to section 51(2) of the *Residential Tenancy Act*?
2. Should the Tenants recover the filing fee?

Background and Evidence

The tenancy began August 15, 2006. At the time the tenancy ended monthly rent was \$807.82. The tenancy ended June 30, 2018.

The Tenants received a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act*. Only the second page of the Notice was provided in evidence before me. Both parties testified that the Notice was dated March 28, 2018 and was to be effective May 31, 2018. I will refer to the 2 Month Notice as the "Notice" for the balance of this Decision.

The Tenants applied to dispute the Notice and were unsuccessful. The file number for that matter is included on the unpublished cover page of this my Decision. A review of that file confirms the Notice was dated March 28, 2018 and was effective May 31, 2018.

The Tenants allege that the rental unit was not used for the stated purpose. The Tenant stated that he was aware that a resident caretaker moved in December 1, 2018.

In response, the Landlord's Property Manager, N.H. testified as follows.

N.H. confirmed that they issued the Notice as the resident caretaker was to move into the rental unit on June 15, 2018 and start work on July 1, 2018. Copies of the offer of employment were included in evidence before me and which confirmed these dates.

N.H. stated that they had to amend the offer of employment on two more occasions, as a result of the difficulty in obtaining vacant possession of the rental unit, and eventually the resident care taker move into the unit on December 1, 2018. In terms of the delay in the start date, N.H. stated that the Tenant disputed the Notice. A hearing occurred on April 26, 2018 and by a Decision of the same date, the Tenant's application was

dismissed and an Order of Possession granted. However, the Order was effective June 30, 2018, one month later than the effective date of the Notice.

N.H. further testified that the Tenant applied for Review Consideration of the April 26, 2018 Decision. By Decision dated May 3, 2018, the Tenants' Application for Review Consideration was dismissed; the result being that the Order of Possession stood.

N.H. confirmed that that they asked for vacant possession as of May 2018 as they intended to do minor upgrades to the rental unit prior to the resident caretaker moving in. However, as a result of the dispute, they had no one to do this work. He claimed that they could not hire another carpenter at the time as they have a long-standing relationship with their regular carpenter (who tends to all their buildings) who also went away for his annual holidays back to Europe from July to September 12, 2018. This holiday affected the Landlord's entire renovation schedule including preparing the unit for the resident caretaker.

To further complicate matters, N.H. stated that in July of 2018, J.F., the intended caretaker had an accident in one of the buildings, wherein he damaged his knee and ankle. As a result of these injuries, he was able to some work, but only light duties. The Landlord had other staff members cover his duties for a period of time and in hopes he would fully recover.

Because the resident caretaker was injured, another tenant, R.S. offered to help clean and care for the building. The Landlord first hired R.S. to help with these duties on a part time basis as of September 2018. Invoices from R.S. were provided in evidence by the Landlord confirming his work at this time. When it was clear J.F. was not going to be able to work full time, the Landlord offered R.S. a full-time position. R.S. then moved into the rental unit as of December 1, 2018. In support of this testimony the Landlord provided a residential tenancy agreement for R.S.

Analysis

Section 49(6)(e) allows a Landlord to end a tenancy in the event the Landlord converts the rental unit for use by a caretaker manager or superintendence of the residential property.

Section 51 provides a tenant with compensation in the event they receive a notice pursuant to section 49 and reads as follows:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

In order to determine whether the Tenants are entitled to compensation pursuant to section 51(2) I must determine whether the Landlords took steps to accomplish the stated purpose for ending the tenancy or whether the property was in fact used for that purpose. If steps are not taken, or the property is not used for the stated purposes, I must then determine whether *extenuating circumstances* prevented this.

Although the effective date of the Notice was May 31, 2018, the Tenants disputed the Notice and as a result the Landlord was not granted possession of the rental unit until

June 30, 2018. In this case, the Arbitrator provided for a later date of possession which I find must be considered when addressing the Tenants' claim pursuant to section 51(2)) as it would not have been reasonable for the Landlord to take steps towards accomplishing the stated purpose until the tenancy ended.

Based on the evidence before me, I find the Landlord took steps to accomplish the stated purpose for ending the tenancy within the six months from the date of the Order of Possession. The evidence confirms that the Landlord communicated with the original/intended caretaker, J.F. as early as March 31, 2018 offering him the job as caretaker. The offer was amended by letter dated April 5, 2018 with an intended start date of July 1, 2018. J.F. was then injured and ultimately could not take the full-time job. As early as September and October 2018, P.R. began working part time for the Landlord as caretaker. The evidence further confirms that P.R. accepted a full time job as resident caretaker and moved into the rental unit as of December 1, 2018. While P.R. was not the caretaker anticipated at the time the Notice was issued, the rental unit was used as a caretaker suite.

On balance I find the Landlords took steps to accomplish the stated purpose and in fact the rental unit was used as a caretaker suite within six months of the date of the Order of Possession.

The Tenants argue that the rental unit was not occupied by the original intended resident manager. The evidence before me indicates there were several issues which impacted the original caretakers' employment, including an injury. While the original caretaker was not able to fulfil the job duties, another caretaker was hired and moved into the rental unit. In all the circumstances, I find the rental unit was used for the stated purpose.

I therefore dismiss the Tenants' claim for monetary compensation pursuant to section 51(2) of the *Act*.

Having made this finding, there is no need for me to consider and determine whether extenuating circumstances prevented the Landlord from using the property as a caretaker suite, which was the reason for issuing the Notice.

Conclusion

The Tenants' application for compensation pursuant to section 51(2) of the *Act* is dismissed.

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: October 12, 2020

Residential Tenancy Branch