



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order in the amount of \$25,226.00, for 12 month compensation pursuant to section 51 of the Act, for moving costs, and for 3 months of wages due to job loss.

The tenant, a support person for the tenant, OG (tenant support), the landlord, a support person for the landlord, MB (landlord support), counsel for the landlord, FQ (counsel) and two witnesses, LN and TH (witnesses), attended the teleconference hearing. All participants were affirmed, the hearing process was explained, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me. The witnesses did not provide testimony at the hearing.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence. Based on the above, I find the parties were sufficiently served according to the Act.

Preliminary and Procedural Matters

The parties confirmed their respective email addresses during the hearing. The parties were advised that the decision would be emailed to the parties. Any resulting monetary order will be emailed to the appropriate party for service on the other party.

In addition to the above, at the outset of the hearing, the tenants claim for moving costs was dismissed without leave to reapply as the tenant confirmed that they did not dispute the 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) and as a result, the parties were advised that the landlord is not liable for the tenant's moving costs the parties confirmed that the tenant had already received compensation from the former landlord for one month of rent related to being served the 2 Month Notice under the Act.

Furthermore, the tenants claim related to loss of wages was dismissed without leave to reapply as the parties were advised that this matter was not a commercial tenancy, and as result, the landlord is not liable under the Act for the tenant's wages. Given the above, the hearing proceeded with consideration of the tenant's claim for 12 months rent pursuant to section 51(2) of the Act due to what the tenant alleges is that the landlord failed to use the rental property for the reason stated on the 2 Month Notice.

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenancy began in September 2017. There is no dispute that the tenant was paying \$850.00 per month in rent during the tenancy. The tenant is seeking 12 X \$850.00 for a total of \$10,200.00 plus the filing fee.

There is no dispute that the tenant was served a 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 24, 2020 (2 Month Notice). The effective vacancy date listed on the 2 Month Notice was November 30, 2020. The tenant vacated the rental unit on October 31, 2020.

The reason stated on the 2 Month Notice is:

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 on good faith to occupy the rental unit.

The purchaser information contained on the 2 Month Notice matches the name of the landlord respondent, who purchased the property from the tenant's former landlord.

Although the landlord did not submit a copy of the Contract for Purchase and Sale, the tenant did, and it reads in part on page 2 of 7:

The seller will give legal notice **(in accordance with the requirements of section 49 of the Residential Tenancy Act)** to the Tenant to vacate the premise. This notice will be given to the Tenant within 24 hours of the Seller's receipt of the Buyer's deposit (deposit to be provided within 24 hours of Subject Removal). **Tenant to Vacate Premise on or before October 31, 2020.**

[emphasis added]

Counsel for the landlord stated that the tenant did not file their application within 15 days of receipt of the 2 Month Notice, which I will address later in my analysis below. Counsel submits on page 3 of their evidence, the following:

As such, it is [the landlord's] position that [the tenant] is not liable for the amount claimed in her application as she made no formal application for dispute of the application as prescribed in the Residential Tenancies Act (sic).

The parties agreed that at one point, the tenant stated that they could pay a few hundred dollars more per month but the landlord did not agree as that amount was not enough per month and confirmed in their documentary evidence that the landlord purchased the property as an investment property.

Counsel referred to a text from the tenant dated October 12, 2020, which counsel submits was the tenant providing their notice to vacate under the Act, which I will also address later in my analysis below. Counsel also presented a letter from the former landlord dated August 30, 2020 that counsel submits was notice to the tenant to vacate the premises, which I will also address later in my analysis below.

Counsel submits that because the tenant knew that the landlord intended to re-rent the rental unit, that the tenant has abandoned any claim for compensation as the tenant has

failed to prove their loss, and that the tenant's claim is "predatory" as a result. The tenant stated that they made an offer to stay in the rental unit and the landlord denied their offer forcing the tenant to be evicted and that the tenant's claim is for compensation based on the landlord failing to use the rental unit for the stated purpose under the Act.

The landlord's counsel cited section 7 and 49(8) and 49(9) of the Act, which I will address later in my analysis. Furthermore, counsel refers to section 62(4) and the RTB Policy Guideline for Compensation for Damage and Loss, which sets out the four-part test and reads in part:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In addition, counsel referred to several RTB decisions, however, as I am not bound by previous RTB decisions, I will address that further in my analysis below.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

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.

[emphasis added]

Firstly, I find counsel's submission that the tenant did not file their application within 15 days to be moot, as the tenant did not dispute the 2 Month Notice and accepted the 2 Month Notice. However, the Act does not extinguish the tenant's claim for 12 months of compensation because of the fact that they did not dispute the 2 Month Notice. In fact, section 51(3) of the Act states:

(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.**

[emphasis added]

Although both counsel and the landlord were advised of this during the hearing, counsel and landlord made no reference to extenuating circumstances that prevented the landlord from either accomplishing the stated purpose or using the rental unit for the stated purposes for at least 6 months. As a result, I afford no weight to the submission that the tenant did not dispute the 2 Month Notice as it is not relevant to this claim.

I also afford no weight to the landlord claiming that the tenant knew what the landlord intended to do with the rental property, which was to re-rent the rental property for more monthly rent than what the tenant was paying due to section 5 of the Act which applies and states:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In other words, the tenant did not and cannot agree to give up their rights under the Act based on section 5 and therefore I reject counsel's submission that the tenant gave up any right to compensation just because the tenant knew the landlord planned to re-rent the rental unit as an investment property and consistent with this finding, I disagree with counsel that this application is "predatory". Based on the Contract for Purchase and Sale submitted by the tenant, I find that contract clearly indicated that the purchaser has asked the seller to issue a notice to end tenancy based on section 49 of the Act.

In addition, I disagree with counsel regarding a text from the tenant dated October 12, 2020, which counsel submits was the tenant providing their notice to vacate under the Act. I find the text was simply an informal courtesy text to the landlord of when they can expect the tenant's movers to arrive and nothing more. In addition, I completed disagree with counsel regarding a letter from the former landlord dated August 30, 2020 that counsel submits was notice to the tenant to vacate the premises, which I find was a courtesy note to the tenant that a formal legal notice under the Act would be issued once the subject were removed as mentioned in the letter dated August 30, 2020. As a result, I afford no weight to counsel's submissions noted in this paragraph.

I will now address section 7 and the RTB Policy Guideline for Compensation for Damage and Loss, which sets out the four-part test. Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that section 7 of the Act does not require a tenant to abandon any claim for compensation under the Act, and that section 51(2) of the Act states the following:

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.

[emphasis added]

With the wording “must pay the tenant” does not require the tenant to accept a lesser amount or a reduced amount lesser than 12 times the monthly rent.

Counsel referred to section 62(4) of the Act in their submissions, which sets out 3 ways to dismiss all or part of an application for dispute resolution being:

(a) there are no reasonable grounds for the application or part,

(b) the application or part does not disclose a dispute that may be determined under this Part, or

(c) the application or part is frivolous or an abuse of the dispute resolution process.

If find that this section of the Act is not relevant in this matter as I find the application sets out clearly the tenant's request for 12 months of compensation in relation to the 2 Month Notice, that section 51(2) of the Act provides for such compensation and that counsel and the landlord have provided insufficient evidence that this matter is frivolous or an abuse of the dispute resolution process based on my findings below.

In addition, counsel referred to several RTB decisions, however, section 64(1) of the Act states that I am not bound to follow other decisions under the Act. Furthermore, counsel raised the issue of compensation and lists the four-part test for damages or loss under the Act. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is

due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the totality of the evidence before me I find the tenant has met the burden of proof as I find the landlord failed to comply with the reason stated in the 2 Month Notice and that the Act provides for the 12 months compensation and that the tenant is not required to reduce the amount claim as the Act says in part:

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

In other words, the Act does not say up to 12 months on a sliding fee scale, it is 12 times the monthly rent once the breach has been determined.

I will now address counsel's reference to sections 49(8), 49(9) of the Act. Sections 49(8) and 49(9) of the Act relate to disputing the notice, which I have already addressed above and is moot, as the tenant did not dispute the 2 Month Notice, accepted the 2 Month Notice and vacated due to 2 Month Notice being issued. I find that not disputing the 2 Month Notice in no way prejudices the tenant from applying for the 12-month compensation under section 51(2) of the Act and that such a submission is absurd given that tenants have the right to compensation under section 51(2) of the Act in the case of unlawful eviction, which I find this matter to be.

In fact, there is no disputing that the landlord's intent was to purchase the property as an investment property, as the landlord admits to that in their evidence; however, instead of waiting at least 6 months before re-renting the rental unit, the landlord decided to re-rent immediately for much more rent. Therefore, I find the landlord did not accomplish the stated purpose for ending the tenancy, which was to occupy the rental unit as landlord, and did not use the rental unit for the stated purpose for at least 6 months and pursuant to section 51(2) of the Act, I find the landlord is liable and must

pay the tenant the equivalent of 12 times the monthly rent as compensation in the amount of **\$10,200.00** as claimed.

As the tenant's application had merit, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find the tenant has established a total monetary claim of **\$10,300.00** comprised of \$10,200.00, which is 12 times \$850.00 monthly rent, plus the \$100.00 filing fee. Pursuant to section 67 of the Act, I grant the tenant a monetary order in the amount of **\$10,300.00**.

I caution the landlord to comply with the reason stated in a 2 Month Notice in the future pursuant to section 62(3) of the Act.

Conclusion

The tenant's application is partially successful.

The landlord has been cautioned as noted above.

The landlord failed to use the rental unit for the stated purpose and instead, re-rented the rental unit as an investment property contrary to the reason stated on the 2 Month Notice.

The tenant is granted a monetary order pursuant to section 67 of the Act, in the amount of \$10,300.00 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord is cautioned that costs of such enforcement may be recoverable from the landlord.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenant only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 17, 2021

Residential Tenancy Branch