



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNETC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 8, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation;
- an order that the Landlord return the security deposit; and
- an order granting the return of the filing fee.

The Tenant R.J., the Landlord, and the Landlord's Interpreter M.L., attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

At the start of the hearing, the parties agreed that they took part in previous hearing, during which the Landlord was ordered to retain the Tenants' security deposit. As such, the Tenants' claim for the return of their deposit during this hearing is now moot. The Tenant agreed to withdraw this claim, which was withdrawn accordingly.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 51 and 67 of the *Act*?
2. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 15, 2019. During the tenancy, the Tenants were required to pay rent in the amount of \$3,500.00 which was due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$5,550.00 which has since been awarded to the Landlord. The tenancy ended on July 16, 2020. The Tenants submitted a copy of the tenancy agreement in support.

The Tenants are claiming for monetary compensation in the amount of \$42,000.00 which is equivalent to twelve months of rent. The Tenant stated that he received a Two Month Notice from the Landlord on June 24, 2020 stating that the rental unit will be occupied by the landlord or the landlord's close family member. The Tenants provided a copy of the Two Month Notice which is dated June 24, 2020 and has an effective vacancy date of September 15, 2020.

The Landlord testified that he served the Two Month Notice to the Tenants as they intended on having their daughter move into the rental unit in order to attend University. The Landlord provided a copy of an acceptance letter in the University. The Tenant questioned the authenticity of the letter, as it is not dated, nor does it have any letter head relating to the University.

The Tenant stated that they complied with the Two Month Notice and vacated the rental unit on July 16, 2020, earlier than the effective date of the Two Month Notice. The Tenant stated that the Landlord has not yet followed through on the intended purpose of the Two Month Notice as the Landlord's daughter did not move into the rental property. As such, the Tenants are seeking compensation.

The Landlord confirmed that his daughter did not move into the rental unit. The Landlord stated that due to the Covid-19 pandemic, the Landlord's daughter was unable to obtain a travel Visa, and is unable to travel from China. Furthermore, the Landlord stated that

his daughter's University courses are now only offered online, therefore, she is no longer required to attend classes in person. The Landlord stated that he has permitted some family friends to reside in the rental property and he has started to charge them rent.

If successful, the Tenants are also seeking the return of their filing fee paid to make the Application.

Analysis

The Tenants are claiming compensation in the amount of \$42,000.00 which represents twelve months of rent as the Landlord did not follow through on the intended purpose of the Two Month Notice within a reasonable period of time.

Section 51(2) of the Act states;

in addition to the amount payable under subsection one, if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent to 12 times the monthly rent payable under the tenancy agreement.

The Residential Tenancy Policy Guideline 50 (the "Policy Guideline") further explains;

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.

Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. 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.

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.

I accept that the parties agreed that the Landlord served the Tenants with a Two Month Notice on June 24, 2020. The parties agreed that the Landlord served the Two Month Notice to gain vacant possession of the rental unit as the Landlord intended on having his daughter occupy the rental unit following the effective vacancy date of September 15, 2020.

In this case, I accept that neither the Landlord nor their close family member occupied the rental unit for at least six months beginning within a reasonable period after the effective date of September 15, 2020 as indicated on the Two Month Notice. Instead, as stated by the Landlord, the current Covid-19 pandemic constitutes an extenuating circumstance which prevented the Landlord's daughter from obtaining a travel Visa in order to travel from China to attend University. Furthermore, the Landlord stated that his daughter's University courses are now being offered online, therefore, she no longer needs to attend classes in person.

I find that the Landlord provided no documentary evidence to support that his daughter lives in China and is unable to travel due to the Covid-19 pandemic. Furthermore, I find that the Landlord has provided no documentary evidence to demonstrate that his daughters University classes are no longer being offered in person, preventing the Landlord's daughter from occupying the rental unit for at least six months. I find that the

Landlord has not followed through on the intended purpose of the Two Month Notice within a reasonable period after the effective date of the notice. I further find that the Landlord has provided insufficient evidence to demonstrate that extenuating circumstances has stopped the landlord from accomplishing the purpose or using the rental unit.

Based on the above I find that the Tenants are entitled to **\$42,000.00** ($\$3,500.00 \times 12 = \$42,000.00$) in compensation from the Landlord, pursuant to section 51(2) of the *Act*. As the Tenants were successful in their Application, I also find that they are entitled to the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenants are therefore entitled to a Monetary Order in the amount of \$43,000.00.

Conclusion

The Landlord has not taken steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the Two Month Notice. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order in the amount of **\$43,000.00**.

The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: March 16, 2021

Residential Tenancy Branch