



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JSS Investments LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenants HD (the tenant) and HA attended the hearing. The landlord was represented by TD and assisted by advocate DM (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Preliminary Issue – Service

The landlord confirmed receipt of the notice of hearing and the evidence (the materials) in February 2021. I find the tenants served the materials in accordance with sections 88 and 89 of the Act.

The landlord affirmed he served both tenants the response evidence in a single package sent by registered mail on May 19, 2021.

Section 89(1) of the Act states:

(1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(a)by leaving a copy with the person;

(b)if the person is a landlord, by leaving a copy with an agent of the landlord;

(c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Residential Tenancy Branch Policy Guideline 12 states:

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. **Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.**

(emphasis added)

Based on the landlord's testimony, I find the tenants were not served the response evidence in accordance with the Act, as both of them were served together. As noted above, each party must receive the evidence.

Thus, I did not accept the landlord's response evidence.

Issues to be Decided

Are the tenants entitled to:

01. a monetary award for compensation under section 51(2) of the act?

02. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on August 01, 2014 and ended on March 31, 2020. Monthly rent in the amount of \$1,800.00 was due on the first day of the month. The landlord returned the security deposit of \$850.00 to the tenants.

Both parties also agreed a two month notice to end tenancy (the Notice) was served on January 30, 2020. A copy of the Notice was submitted into evidence. It states the rental unit will be occupied by the landlord's close family member. The landlord affirmed the Notice was served with the intent of the landlord's daughter occupying the rental unit. The Notice's effective date was April 01, 2020. The tenants occupied the middle floor rental unit and there are two other units in the rental building.

The tenants are claiming for compensation in the amount of \$21,600.00. The tenant affirmed the rental unit was empty from April 01 to September 01, 2020. The landlord stated her daughter moved to the rental unit on April 01, 2020 and occupied it for six months.

The tenant submitted into evidence a letter from the electricity company dated April 08, 2020: "We wanted to alert you that there's currently no [electricity] account registered at this address. You'll need to register for [electricity] account to prevent a disconnection of electrical service."

The tenant submitted into evidence a letter signed by the upper-floor tenant AB on January 16, 2021:

We resided at [redacted] until September 30 2020 and can confirm that from, April 1, 2020, the date [applicant tenants] were evicted, the unit was left empty until September 1, 2020. Around early/mid-August, 2020 we noticed a 'For Rent Sign" along the property line facing the road that included [landlord's] contact number.

[...]

If you have any future questions we can be contacted by email at [redacted]

The landlord stated AB's letter is not notarized and that he does not know if AB was the upper-floor tenant. Later the landlord testified that AB was the upper-floor tenant.

The tenant submitted a text message from the upper-floor tenant AB on August 30, 2020: "Also, FYI people are about to move into your old place, no relation to [landlord]..."

The tenant submitted a photograph taken on August 13, 2020 showing a 'For rent' sign in front of the rental building. The landlord said he does not know when the photograph was taken and the 'For rent' sign is for the upper-floor rental unit.

Analysis

Section 49(3) of the Act states: "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

I accept the landlord's undisputed testimony that the Notice was served with the intent of the landlord's daughter occupying the rental unit. Per section 51(2) of the Act, as the Notice's effective date was April 01, 2020, the landlord's daughter must have occupied the rental unit from April 02 to October 02, 2020.

Residential Tenancy Branch Policy Guideline 2A states:

6-month occupancy requirement

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).

[...]

E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE

If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- taken steps to accomplish 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

the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

The parties offered conflicting testimony regarding the occupancy of the rental unit after the tenancy ended. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The tenant's testimony was coherent and detailed. The letter signed by the upper-floor tenant is convincing and credible. The letter contains an email address to allow the reader to contact the upper-floor tenant. A letter does not need to be notarized to be credible. The landlord did not rebut the letter's content, or the text message dated August 30, 2020. The landlord said he does not know if AB was the upper-floor tenant and later confirmed that AB was the upper-floor tenant.

Based on the tenant's coherent and detailed testimony, the upper-floor tenant letter, the text messages dated August 30, 2020 and the electricity company letter, I find, on a balance of probabilities, that the landlord's daughter did not occupy the rental unit from April 02 to October 02, 2020.

As such, per section 51(2) of the Act, the tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenants a monetary award in the amount of \$21,600.00 (\$1,800.00 x 12).

As the tenants were success with their application, pursuant to section 72 of the Act, I authorize them to recover the \$100.00 filing fee.

Thus, the tenants are entitled to a monetary award in the amount of \$21,700.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenants a monetary award in the amount of \$21,700.00.

The tenants are provided with this order in the above terms and the landlord must be served with this order in accordance with the Act. 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: June 11, 2021

Residential Tenancy Branch