



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 in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy of a basement unit in a house started on November 1, 2018 and ended on January 31, 2021. At the start of the tenancy rent of \$1,050.00 was payable on the first day of each month. As of April 2020, the rent payable was \$1,250.00. The Landlord served the Tenant with a notice to end tenancy for landlord’s use dated December 31, 2020 (the “Notice”). The effective date of the Notice was set at February 28, 2021. The reason stated on the Notice is that the Landlord’s parent would be occupying the unit. The Parties subsequently signed a mutual agreement to end the tenancy for February 1, 2021. The Landlord’s mother

moved into the unit on or about February 2, 2021 and moved out on March 27, 2021 as the house containing the unit was sold.

The Tenant states that prior to the Landlord serving the Notice the Landlord informed the Tenant that the Landlord was moving out of the house. The Tenant states that the Landlord showed the unit to prospective purchasers on January 24, 2021 and that the unit was sold on or about February 16, 2021.

The Landlord states that a family death brought the Landlord and mother to decide to live with each other and that the Notice was served in good faith as the mother was going to occupy the unit while the house was being renovated. The Landlord states that as the planned renovations turned out to be too costly, they decided to sell the unit and purchase another residence for them both to live in. The Landlord argues that the mutual agreement left the Landlord and mother free to purchase and move into another residence. The Landlord states that had the Tenant not signed the mutual agreement to end the tenancy the Landlord and mother would have continued to occupy the house and unit.

The Tenant states that it was the Tenant's understanding that the mutual agreement only changed the effective move-out date on the Notice and that the Tenant wanted an earlier move-out date as the Tenant had found another rental unit.

Analysis

Policy Guideline #11 provides that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given. It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant. If a landlord and tenant agree to withdraw a notice to end tenancy for landlord use under section 49, the tenant is not entitled to

compensation for the notice. The tenant must repay any compensation that was paid as a result of the notice.

It is undisputed that the mutual agreement to end the tenancy was signed after the Notice was given to the Tenant. The Notice already ended the tenancy for landlord's use and the Tenant's undisputed evidence that they found another rental before signing the mutual agreement indicates that the Tenant relied on the Notice to find another unit. The mutual agreement does not set out that the Notice was withdrawn or replaced with the mutual agreement. There is no evidence that the Tenant was informed by the Landlord that the mutual agreement replaced the Notice and there is no evidence that the Tenant was not compensated for the Notice. For these reasons and considering the Tenant's evidence that they understood that the agreement was only in relation to changing the effective date of the Notice, I find on a balance of probabilities that the mutual agreement only changed the move-out date and that the Notice was not mutually cancelled.

Section 51(2) of the Act provides that 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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Based on the undisputed evidence that the unit was not occupied by the Landlord's mother for at least 16 months duration I find that the Landlord must pay the Tenant **\$15,000.00** (\$1,250.00 x 12).

Section 51(3) of the Act provides that 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 applicable, from

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

(b) using the rental unit, except in respect of the purpose specified in section 49

(6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The evidence that renovations could not be carried out for financial reasons is not evidence that the Landlord could not avoid the sale of the house containing the unit for at least 6 months or that the Landlord's mother could not reside in the unit for at least 6 months. There is no evidence that matters that could not be anticipated or were outside the Landlord's control that prevented the occupation of the unit for at least 6 months, and I note the Tenant's undisputed evidence that the Landlord informed the Tenant prior to the issuance of the Notice that the Landlord intended to move out of the house. For these reasons I find on a balance of probabilities that the Landlord has not provided evidence of any extenuating circumstances that stopped the Landlord's mother from occupying the unit for at least 6 months. The Landlord is not excused from the compensation required to be paid to the Tenant.

As the Tenant has been successful with its claim, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$15,100.00**

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$15,100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: August 18, 2021

Residential Tenancy Branch