



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNETC, FFT
For the landlord: MNDCL, MNDL, FFL

Introduction

The tenant filed an Application for Dispute Resolution (the “tenant’s Application”) on May 6, 2021. They are seeking an order for: compensation for monetary loss; the return of deposits they paid; and the Application filing fee.

The landlord filed their Application for Dispute Resolution (the “landlord’s Application”) on July 16, 2021. They are seeking an order for compensation for monetary loss; the return of deposits they paid; and the Application filing fee.

The matter proceeded by hearing on August 24, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Preliminary Matter

The *Residential Tenancy Branch Rules of Procedure* sets out the rules for parties’ exchange of evidence in advance of the hearing. By Rule 3.1, an applicant must serve evidence with the Notice of Dispute Resolution within three days of its’ availability. By Rule 3.15, a respondent must ensure their evidence is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible, not less than seven days before the hearing.

In the hearing, the tenant stated they did not receive the landlord’s prepared evidence. The landlord stated they placed this envelope in the mailbox at the tenant’s current residence. I find it more likely than not that the tenant did not receive these materials; the landlord did not

provide a clear account on how they delivered this material to the tenant and there is no evidence of the sureness of their delivery.

I advised the parties at the outset of the hearing that I would carefully monitor the landlord's references to their prepared evidence that the tenant did not have. On any relevant piece, I would decide whether the tenant needed opportunity to review a specific piece of evidence, then make any necessary order for the landlord to provide that evidence. I made this undertaking to ensure consideration of any evidence not disclosed does not unreasonably prejudice the tenant, who did not receive it.

In their Application, the tenant named the purchaser landlord as well as their prior landlord as Respondents. The prior landlord was that person who issued the Notice to End Tenancy for the landlord's Use of Property (the "Two-Month Notice") at the purchaser landlord's request. For the reasons outlined below, I amend the tenant's Application to show the purchaser landlord as the sole Respondent in this matter (hereinafter referred to as the "landlord"). This is with reference to s. 51 of the *Act*. The prior landlord is hereby excluded from this matter.

Issues to be Decided

Is the tenant entitled to monetary compensation for the Two-Month Notice", pursuant to s. 51 of the *Act*?

Is the tenant entitled to recover the filing fee for the tenant's Application, pursuant to s. 72 of the *Act*?

Is the landlord entitled to a monetary order for compensation, pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for the landlord's Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement they signed at the start of the tenancy. This was with the prior landlord who attended the hearing as a witness. This was for the tenancy that started on June 15, 2019 as a one-year fixed term, thereafter continuing on a month-to-month basis. The rent remained at \$1,850 throughout the tenancy and the tenant paid a security deposit at the start of \$925.

The landlord here made the offer for the property in November 2020, then closing the sale on January 31, 2021. They asked the prior landlord to issue the Two-Month Notice and that prior landlord did so on November 16, 2020. This gave the final move-out date of January 22, 2021. The tenant's final move-out date was February 1, 2021.

The Two-Month Notice specified that "the purchaser or a close family member intends in good faith to occupy the rental unit." The prior landlord provided documentary evidence showing that their own realtor advised that the purchaser planned on moving into the home on February 1, 2021, after closing the sale. The prior landlord and the tenant in the hearing stated the landlord did not complete a property or house inspection prior to the sale; the landlord confirmed this detail in the hearing.

a. tenant's claim for monetary compensation related to the Two-Month Notice

The tenant provided testimony in the hearing that the purchaser – i.e., the landlord – did not move in. Prior to this, the landlord wanted to bring in an architect. To the tenant, this shows the landlord was making plans from the time of the sale. After their tenancy, the tenant visited the property to retrieve mail from their rental unit address and noted that renovations began in mid-February. The tenant provided photos showing construction inside the rental unit.

For this, the tenant claims \$22,200 for compensation, which is 12 months of rent paid at \$1,850 per month. This is because the new owner/landlord did not move in as stated on the Two-Month Notice.

The landlord's documentary evidence was not present and not before parties in the hearing; however, they had the chance to explain their version of the events. They submitted that there were exceptional circumstances in place that prevented them from occupying the rental unit.

The landlord presented that they had previously applied for a renovation permit. Once the municipality provided the plans for the property, they landlord provided these to the architect they hired for this job. They asked the architect to have a look at the house in advance; however, at all times the landlord's intention was to move into the house. The landlord underlined that the renovations for which they hired an architect were for cosmetic renovations and they intended to move into the house.

The landlord's first visit to the house was when they received the key from the prior landlord. The landlord stated they were not allowed by the tenant here to visit the property and make an inspection. They were unable to see inside the house prior to their first visit. On this visit, they noticed many problems; this includes leakage, mould, pest problems; asbestos from aged building materials; a rotten deck; and general deterioration of the property due to lack of maintenance.

b. landlord's claim for monetary compensation

The landlord submitted they had to make another living arrangement and paid rent for 6 months because they could not move into the house on the property, and they had intended to be their primary residence. In addition, they had to pay the mortgage for the property which they could not use and started renovating to make it suitable for living. In addition to this, they are paying for a storage bin for their furniture.

In the hearing, the landlord provided that this claimed amount was to show the tenant that they are losing money too. They set out that they paid the following amounts: \$3,000 per month, with \$500 - \$600 per month for 6 months; bin rental of \$135 per month, and bin delivery and pickup for "around \$250." They stated in the hearing that the state of their purchased property presented difficulty when they had to find a new residence with limited availability and trying to accommodate their need for schools nearby.

Analysis

a. tenant's claim for monetary compensation related to the Two-Month Notice

Under s. 49 of the *Act* a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in certain circumstances where a landlord issues a Two-Month Notice. This is covered in s. 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 . . . 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 of 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 . . . if, in the director's opinion, extenuating circumstances prevented the landlord . . . 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.

Here, the landlord as purchaser instructed the prior landlord issue the Two-Month Notice on November 16, 2020. This was with the end-of-tenancy date of January 22, 2021. Upon negotiation with the tenant, the final move-out date became February 1, 2021. The tenant did not legally challenge the validity of the Two-Month Notice and moved out from the rental unit on February 1, 2021.

I find the evidence shows the landlord did not use the rental unit for the stated purpose provided on the Two-Month Notice for at least 6 months' duration. This is as of the date of this hearing. The landlord at no time occupied the rental unit after the tenant vacated for the reason of the landlord's own use after their purchase. This means they failed to use the rental unit for the stated purpose as set out in s. 51(2).

There was no indication from the landlord that they were set to move into the rental unit or made provisional arrangements to do so. Contrary to the stated purpose on the Two-Month Notice, the landlord hired an architect to make designs on the rental unit property.

The *Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy* gives a statement of the policy intent of the legislation. This describes exceptional circumstances as "matters that could not be anticipated or were outside a reasonable owner's control." Applying this to the current situation involving this end of tenancy, I find the landlord was aware of the state of the rental unit and was not prevented from occupying the rental unit home because of their sudden discovery of the state of the home. Their failure to inspect directly yet relying on the provisional assessment of an architect in line with renovating, does not constitute exceptional circumstances. Beyond this, I find the landlord was not barred from entering further as they claimed.

With no extenuating circumstances presented, I find there is nothing precluding my finding that this is a situation where s. 51(2) applies. For this, the landlord must pay the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I find there were not extenuating circumstances present that forced the landlord to abandon their stated Two-Month Notice intention to occupy the rental unit. I find as fact the landlord did not enter the rental unit to make an inspection prior to purchase. The landlord had access and they did not prove definitively that access to them was barred by the tenant here. Additionally, an architect visited the property in advance to assess the situation; I find this is with the design of starting renovations as soon as the purchase was completed. I conclude the architect advised the landlord of the state of the rental unit house with designs to renovate in motion. This was prior to February 1, 2021 when the tenancy ended.

For the reasons above, I find the tenant is entitled to the amount that is 12 times the monthly rent. The tenant stated that it was the prior landlord who gave the Two-Month Notice to them on November 16, 2020. There is no evidence to show otherwise. By s. 51(2) I find it more likely than not that it was “the purchaser who asked the landlord to give the notice” to the tenant. This makes the purchaser, carried over and so named as the landlord in this hearing, obligated to pay the amount in question. This is the amount of \$22,200 as claimed by the tenant.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application.

b. landlord’s claim for monetary compensation

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish all of the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The landlord here stated that they filed this Application to show the tenant that they had endured significant expenses associated with making alternate living arrangements after the end of this tenancy. At no time did they make any statement that attributes this loss to the actions or inactions of the tenant here.

I find this does not show that the landlord’s loss – which is not quantified – results from any violation of the *Act*, the Regulations, or the tenancy agreement by the tenant.

Further, the landlord did not provide a breakdown of their monetary claim for this hearing. While they described this in the hearing, they did not ensure proper service of evidence in advance of the hearing and I have not referred to their documentary evidence. Because of this, they have not established the value of the damage or loss.

For these reasons, I dismiss the Application of the landlord in its entirety, without leave to reapply.

Conclusion

I order the landlord to pay the tenant the amount of \$22,300. I grant the tenant a monetary order for this amount. Should the landlord fail to comply with this Order after the tenant serves it, the tenant may file this monetary order in the Provincial Court (Small Claims) where it may be 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 s. 9.1(1) of the *Act*.

Dated: September 10, 2021

Residential Tenancy Branch