Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROLINE MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FF

Introduction

On April 9, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the "*Act*") and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

P.M. attended the hearing as counsel for the Tenant. A.T. and G.R. attended the hearing as agents for the Respondent. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of P.M., provided a solemn affirmation.

P.M. advised that the Notice of Hearing and evidence package was served to the Respondent on April 22, 2021 and A.T. confirmed that this package was received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Respondent was duly served the Notice of Hearing and evidence package. As such, all of the Tenant's evidence was accepted and considered when rendering this Decision.

A.T. advised that the Respondent's evidence was served to the Tenant's counsel by email on August 27, 2021 and P.M. confirmed that he received this evidence. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 12, 2012 and ended when the Tenant gave up vacant possession of the rental unit on January 31, 2021 after being served the Notice. Rent was established at an amount of $1,726.00 per month and was due on the first day of each month. A copy of the signed tenancy agreement was submitted as documentary evidence.

The undisputed evidence is that the Tenant was served with the Notice on December 30, 2020 and the reason on the Notice was that "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." As well, it was noted that the close family member occupying the rental unit would be "The landlord or the landlord's spouse." The effective end date of the tenancy was noted as February 28, 2021 on the Notice.

A.T. advised that the property management company, that was named as the Respondent on this Application, represented the Landlord/owner during the tenancy but this management contract ended on January 31, 2021. Thus, this company was incorrectly named as the Respondent. He stated that his company was instructed by the Landlord/owner, in writing, to serve the Notice to the Tenant because the Landlord/owner wanted to use the property for his own use. A.T. referenced documentary evidence submitted to support his position that the Landlord/owner requested that the Notice be served and that the service agreement between the property management company and Landlord/owner ended on January 31, 2021. He cited the Tenant's own documentary evidence of a title search showing who the

Landlord/owner is, and he stated that he advised this person to show up for this teleconference hearing.

P.M. advised that the property management company was listed as the Landlord on the tenancy agreement and on the Notice. He stated that this company, at all material times, carried on duties as the Landlord, and this company never provided any indication to the Tenant that they were not the Landlord. He then referenced Section 1 of the *Act* regarding the definition of Landlord, and he submitted that the property management company met this definition.

He cited the title search of the property on March 23, 2021, that was submitted as documentary evidence, that shows the that the Landlord/owner of the rental unit sold the property 23 days after the effective end date of the tenancy on the Notice. It is his position that the property management company's role ended when the tenancy officially ended on the effective end date of the tenancy on the Notice, February 28, 2021. As this company was still the Landlord, and as rental unit was not used for the stated purpose, this company should be responsible for the 12 months' compensation owed under Section 51 of the *Act*. If this position is not accepted, it could open a loophole for a Landlord/owner from avoiding being responsible for this compensation. He cited a past Decision of the Residential Tenancy Branch where a Monetary Order was awarded against the agent of the Landlord/owner, and it was determined that the agent and the Landlord/owner would have to remedy this matter between themselves.

He stated that the title search does not indicate who the actual owner of the rental unit currently is, nor does it show that person's address. He confirmed that no efforts were made to contact the property management company to get any information of the Landlord/owner that advised the company to serve the Notice.

A.T. advised that the property management company does not conduct business with respect to sales of properties, so it was not involved with any sale of the property that the Landlord/owner elected to conduct after the service agreement and business relationship between the two parties ended. As well, regarding P.M.'s submission that the Tenant did not know about the Landlord/owner, A.T. referenced an email from the Landlord/owner, dated January 28, 2021, where he stated, "As discussed I had stated that I will be paying [the Tenant] $1575 on February 28th." As such, it was his belief that the Tenant was contacted directly by the Landlord/owner to have some compensation reimbursed to the Tenant.

P.M. advised that there is no evidence that any payment was made between the Tenant and the Landlord/owner; however, he later acknowledged that the Tenant had direct contact with the Landlord/owner after the property management company's service agreement ended on January 31, 2021. He submitted that the Landlord/owner was not named as a Respondent because the address listed for this person was from 2008 and it is possible that it could have changed. As well, as it was a US address, he believed

that the cost for serving this person would be “extraordinarily expensive.” He is unsure of what efforts were made to find an address for this person, and he confirmed that the property management company was never contacted to see if they had the Landlord/owner’s service address. He submitted that it is not the Tenant’s responsibility to find a service address for the Landlord/owner, and then name this person as the Respondent on the Application.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* states, as follows, the definition of a Landlord when a Two Month Notice to End Tenancy for Landlord’s Use of Property is served a Tenant:

> ***Landlord's notice: landlord's use of property***
>
> ***49*** *(1)In this section:*
>
> *"landlord" means*
>
> *(a)for the purposes of subsection (3), an individual who*
> *(i)at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and*
> *(ii)holds not less than 1/2 of the full reversionary interest, and*
> *(b)for the purposes of subsection (4), a family corporation that*
> *(i)at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and*
> *(ii)holds not less than 1/2 of the full reversionary interest;*

When reviewing P.M.’s submissions that the property management company is the Landlord by definition in Section 1 of the *Act*, I find it important to note that Section 49 of the *Act* clearly outlines the definition of a Landlord when this type of Notice is served. Given that the undisputed evidence is that the Notice was served, I am satisfied that the definition of Landlord under Section 49 would apply. As such, I do not find that the property management company would meet this definition as a Landlord under this Section of the *Act*.

Furthermore, the consistent and undisputed evidence is that the property management company noted “(As Authorized Agent for the Owner)” on the Notice and “as authorized agents for the owner” on the tenancy agreement. In addition, the Tenant even noted in

this Application that the named property management company was an "(AGENT FOR LANDLORD)". As such, I do not accept P.M.'s submission that the Tenant was not aware that the property management company was not the Landlord/owner. Moreover, it does not appear as if the Tenant had any issue with receiving what was likely the one month's compensation owed to him as a result of being served the Notice. Given the documentary evidence submitted from the Landlord/owner appearing to indicate that he would be paying an amount to the Tenant that is approximately close to the amount of one month's rent, I find it more likely than not that the Tenant was compensated this amount by the Landlord/owner, and that he was aware that this person was the Landlord/owner of the rental unit.

I find it important to note that it is the responsibility of the party making the Application to name the correct legal name of the Respondent, if operating as an individual, or the correct name of the Respondent, if operating as a business. This is to ensure that any Orders granted would be enforceable on the proper party.

However, P.M. acknowledged that the Landlord/owner was not named as a Respondent on this Application as the address for this person on the title search "could have changed". I note that no efforts were made to confirm this speculation, or to contact the property management company to get any information about the Landlord/owner. As well, he noted that another reason this person was not named was due to his belief that serving a package would be "extraordinarily expensive." I find this to be an unreasonable and unlikely conclusion. Rather, it is apparent that the Tenant, or P.M., did little in the way of due diligence in attempting to name the correct party, and elected to name the property management company as it was the apparent path of least resistance.

While it is clear, in my view, that the property management company acted as agent for the Landlord/owner, the undisputed evidence is that this business arrangement ended with the Landlord/owner of the rental unit on January 31, 2021. Therefore, I am satisfied that the property management company had no further dealings with the Landlord/owner after this date. While P.M. referenced a past Decision of the Residential Tenancy Branch regarding, in his opinion, a similar fact pattern, I note that I am not bound by past Decisions. Based on the evidence and testimony before me, I find that the Tenant has named the incorrect party as a Respondent in this Application. Had the Tenant, or P.M., also named the Landlord/owner as a Respondent, served this person, and submitted evidence to establish that they had a valid service address for this person, it is possible that the outcome may have been different.

As I am not satisfied that the correct Respondent was named or that the Notice of Hearing and evidence package was served, in accordance with the *Act*, to the correct party, I dismiss this Application with leave to reapply.

As the Tenant was not successful in this claim, I find that the Tenant is not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Application for Dispute Resolution with leave to reapply; however, this does not extend any applicable time limits under the legislation.

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: October 6, 2021

Residential Tenancy Branch