



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, and to recover the filing fee for this application. The matter was set for a conference call.

Both the Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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.

Issues to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*?
- Is the Tenant entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded this tenancy began on August 1, 2019, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. Rent in the amount of \$2,200.00 was to be paid by the first day of each month, and at the outset of the tenancy, the Tenant had paid a \$1,100.00 security deposit and a \$1,100.00 pet damage deposit. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

All parties agreed that the Landlord served the Tenant a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") issued September 18, 2020. The Notice indicated that the Tenant was required to vacate the rental unit as of November 30, 2020. The reason checked off by the Landlord within the Notice was as follows:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent, child of that individual's spouse).*
 - *The Landlord or the landlord's spouse*

Both parties agreed that the Tenant moved out of the rental unit, in accordance with the Notice on November 30, 2020, and that the Landlord returned the security and pet damage deposits to the Tenant. The Tenant submitted a copy of the Notice into documentary evidence.

The Tenant testified that in the early spring of 2021, they found out that the Landlords had listed the property for sale. The Tenant testified that they did not know the exact date the property was sold but that they understand it to have been sometime in early April 2021. The Tenant submitted a copy of the online advertisement listing the property for sale into documentary evidence.

The Tenant is requesting compensation for the rental property not being used as indicated on the Notice for the required minimum of six months.

The Landlords testified that they did move into the property as they stated they would not their Notice, moving in early December 2020. When asked, the Landlord testified that they had decided to sell the property as they did not like the neighbourhood, confirming that they sold the property on April 15, 2021. The Landlord testified that they agreed that they had not lived in the property for six months before selling the property but that they were unaware they had to use the property for the stated purpose for six months.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51(2) of the *Act*, which states the following:

Tenant's compensation: section 49 notice

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, 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

- (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 agreed-upon testimony of these parties that the Landlords sold the rental property on April 15, 2021, four and a half months after they had taken back possession of the rental unit under a Two-Month Notice to end tenancy for Landlord's Use of Property pursuant to section 49 of the *Act*. I find that the Landlords were in breach of sections 49 and 51 of the *Act* when they did not use the rental property for the stated purpose on their Notice to end tenancy for a minimum of six months.

Pursuant to section 51 of the *Act*, I find that the Tenant has successfully proven they are entitled to compensation for the Landlord's breach of the *Act*. Therefore, I grant the Tenant a monetary order in the amount of **\$26,400.00**, consisting of the equivalent of 12 times the monthly rent payable under the tenancy agreement as compensation.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the **\$100.00** filing fee paid for this application.

Conclusion

I grant the Tenant a Monetary Order in the amount of \$26,500.00. The Tenant is provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords 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: October 18, 2021

Residential Tenancy Branch