



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51.

The tenancy agreement entered into evidence only lists tenant D.D. as a tenant. The tenant's application for dispute resolution also lists three other people, the tenant testified that they are her children who were living with her at the time of the eviction. I find that only tenant D.D. is a correctly named tenant, pursuant to section 64 of the *Act*, I amend the tenant's application to only list tenant D.D. (the "tenant").

The tenant, the tenant's advocate, the landlord and the landlord's spouse attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Issue to be Decided

1. Is the tenant entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy started with a different landlord. The landlord listed in this application for dispute resolution took possession of the subject rental property on February 1, 2021. Monthly rent in the amount of \$1,050.00 was payable on the first day of each month.

Both parties agree that the landlord's spouse personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property on February 1, 2021. Page one of the Two Month Notice (the "Two Month Notice") was entered into evidence by the tenant. The Two Month Notice is not signed or dated by the landlord. The tenant testified that the other pages of the Two Month were left blank. The landlord's spouse testified that he must have "missed that". Both parties agree that the landlord and or the landlord's spouse verbally told the tenants to move out by April 1, 2021. Both parties agree that the tenant complied with the Two Month Notice and vacated the subject rental property on April 1, 2021.

The tenant testified that the landlord and the landlord's spouse told her that their daughter was going to move into the subject rental property. The tenant testified that the landlord's daughter did not move in and the landlords renovated the subject rental property.

The landlord's spouse testified that they told the tenant when the Two Month Notice was served, that they planned on renovating the unit and then having their daughter move in. The landlord's spouse testified that they are still renovating the property and that their daughter will move in around January of 2022.

Analysis

Section 51 of the *Act* states:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before

the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

(3) 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 the case may be, 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.

Residential Tenancy Policy Guideline #50 states:

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days....

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy....

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

Both parties agree that at the time of this hearing, October 25, 2021, the landlord or a close family member of the landlord has not moved into the subject rental property. The tenant moved out in accordance with the Two Month Notice and the accompanying verbal instructions over six months ago. I find that the stated purpose for ending the

tenancy was that the landlord or a close family member of the landlord was going to move in. I find that the stated purpose for ending the tenancy was not accomplished within a reasonable period after the effective date of the notice, contrary to section 51(2)(a) of the *Act*.

I find that while the Two Month Notice served on the tenant has many deficiencies, the deficiencies, such as not being signed and dated, do not impact the operation of section 51 of the *Act* because the validity of the Two Month Notice does not trigger the possibility of compensation under section 51 of the *Act*. The possibility of compensation under section 51 of the *Act* is triggered by the tenant receiving the Two Month Notice, whether or not that notice is valid.

I accept the landlord's spouse's testimony that the renovations to the subject rental property are extensive and are not yet complete. I accept the landlord's spouse's testimony that after the renovation is completed his daughter will move into the subject rental property. Based on the landlord's spouse's testimony, I find that the landlord should have served the tenant with a Four Month Notice to End Tenancy for Renovation, Repair, Demolition or Conversion of a Rental Unit as the landlord's intention was always to renovate the property before his daughter moved in.

I find that the landlord did not intend for his daughter to move into the subject rental property before renovations were complete. I find that the landlord has not provided any extenuating circumstances that prevented a close family member of the landlord from moving in. The service of the wrong notice to end tenancy is not an extenuating circumstance. Ignorance of the law and ignorance of the correct notice to end tenancy to serve is not an extenuating circumstance.

Pursuant to section 51(2) of the *Act*, I find that the tenant is entitled to a monetary award equivalent to 12 months' rent, in the amount of \$12,600.00.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$12,600.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. 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: October 25, 2021

Residential Tenancy Branch