



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNETC, FF

Introduction

On June 13, 2021, the Tenants 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*.

Both Tenants attended the hearing. M.S. attended the hearing and advised that his wife was the Landlord/owner of the rental unit, as defined by the *Act*, and that he was attending as her agent. As this person was noted as the Landlord on the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) and on the tenancy agreement, in addition to M.S.’s name, I have amended the Style of Cause on the first page of this Decision to add the Landlord/owner’s name to this dispute.

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 provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing and evidence package to M.S. by registered mail on August 7, 2021 despite this package being ready by July 7, 2021. M.S. confirmed that he received this package and that he was prepared to

proceed despite this package being served late, contrary to Rule 3.1 of the Rule of Procedure (the "Rules"). As he was prepared to proceed, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. As this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules, I am satisfied that the Landlord was sufficiently served with the Tenants' evidence. As such, this evidence was accepted and will be considered when rendering this Decision.

M.S. advised that he did not serve his evidence to the Tenants. As this evidence was not served to the Tenants in accordance with Rule 3.15 of the Rules, I have excluded this evidence will not 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

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property?
- Are the Tenants 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 December 15, 2018 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on June 1, 2021 after being served with the Notice. Rent was established at an amount of \$2,400.00 per month and was due on the 15th day of each month. A security deposit of \$1,200.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence.

All parties agreed that the Tenants were emailed the Notice on April 14, 2021. The reason the Landlord checked off on the Notice was because "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, the Landlord specifically noted that "The landlord or the landlord's spouse" would be occupying the rental unit. The Landlord indicated on the Notice that the effective end date of the tenancy was June 30, 2021. A copy of this Notice was submitted as documentary evidence.

M.S. advised that the mortgage on the rental unit was high, and due to financial difficulties attributed to the COVID-19 pandemic which hurt their business, the Notice was served. He submitted that the Landlord moved into the rental unit on June 15, 2021; however, she moved out of the rental unit on September 10, 2021 to move back in with him at his property. He stated that "someone" moved into the rental unit with the Landlord on June 15, 2021, and that this person continued to live there after she vacated the rental unit. However, he would not elaborate on who this person was. He also confirmed that the rental unit has been listed for sale since June 15, 2021.

M.S. made references to the difficulty he was having with his personal relationship with the Landlord, and he stated that was the reason she moved into the rental unit. However, this relationship was repaired, and she moved back into his house on September 10, 2021. He indicated that they plan to move back into the rental unit before the end of October 2021.

The Tenants advised that they went back to the rental unit in July 2021 to pick up some mail and they met a person living there that informed them that they were now renting the unit from M.S. As well, they noted that the Landlord has listed the rental unit for sale, and they referenced documentary evidence to support this position. As it is their belief that the Landlord did not use the property for the stated purpose, they are seeking compensation in the amount equivalent to twelve months' rent (**\$28,800.00**) pursuant to Section 51(2) of the *Act* as they were served the Notice and the Landlord failed to use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

In addition, they stated that they were seeking compensation in the amount of one month's rent (**\$2,400.00**) pursuant to Section 51(1) of the *Act* because they did not receive this after giving up vacant possession of the rental unit early. They stated that they gave their 10-day written notice to vacate early in mid-May 2021 to end the

tenancy on June 1, 2021. They submitted that they paid \$1,200.00 by electronic transfer for half of May 2021 rent, and they received the security deposit back for the balance.

M.S. advised that on April 21, 2021, the Tenants requested that their security deposit be applied towards May 2021 rent, so he waived half the month's rent. He stated that he checked his bank statement and there was no payment from the Tenants for any amount of May 2021 rent.

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.

With respect to the Tenants' claim for twelve-months' compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on April 14, 2021 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

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.

(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.

With respect to this situation, I also find it important to note that Policy Guideline # 50 states that “A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.”

Finally, the Policy Guideline outlines the following about extenuating circumstances: “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

When reviewing the totality of the evidence before me, at the time the Notice was served, M.S. advised that it was the Landlord's intention to move into the rental unit and that the Notice was served in good faith. There is no doubt that this may have been the case; however, the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months, beginning within a reasonable period of time after the effective date of the Notice.

The consistent and undisputed evidence is that the effective date of the Notice was June 30, 2021, but the Landlord moved in and occupied the rental unit on June 15,

2021. However, M.S. acknowledged that the Landlord moved out of the rental unit on September 10, 2021 and that another person, that did not meet the description of an acceptable person permitted to occupy the rental unit under the *Act*, continued to occupy the rental unit after this date.

M.S. stated that the Landlord moved out of the rental unit for the betterment of their family dynamic, and I can reasonably infer that this was his submission on an extenuating circumstance that prevented the Landlord from occupying the rental unit for a period of at least six months after the effective date of the Notice. However, I do not find that this reasons would meet the criteria above that establishes what would be considered an extenuating circumstance.

As it is undisputed that the Landlord did not occupy the rental unit for at least six months after the effective date of the Notice, as I am not satisfied that what M.S. referred to would adequately constitute an extenuating circumstance that would have prevented the Landlord from occupying the rental unit for at least six months after the effective date of the Notice, and as another person, that was not the Landlord, M.S. or a close family member of either of them, occupied the rental unit after the Landlord vacated on September 10, 2021, I find that the Landlord breached the *Act*. Consequently, I am satisfied that the Tenants are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$28,800.00**.

With respect to the Tenants' claim for one month's compensation pursuant to Section 51(1) of the *Act*, I note that both parties have provided conflicting testimony with respect to this compensation. However, I find that neither party has submitted sufficient documentary evidence to support their positions. As this is the Tenants' Application, and as they have provided insufficient documentary evidence to support this issue, I dismiss this claim in its entirety.

As the Tenants were partially successful in these claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

12 months' compensation	\$28,800.00
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Filing fee	\$100.00
TOTAL MONETARY AWARD	\$28,900.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$28,900.00** 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 26, 2021

Residential Tenancy Branch