



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 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; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties 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 address for service of this decision.

The tenant testified that she left a copy of this application for dispute resolution and evidence in the mailbox of the subject rental property on or around June 9, 2021. The landlord testified that he received the above documents on June 9, 2021. I find that the tenant's application for dispute resolution and evidence were sufficiently served for the purposes of this Act, on the landlord, pursuant to section 71 of the *Act*.

The landlord testified that he served the tenant with his evidence via registered mail on October 2, 2021. The tenant testified that she received the landlord's evidence but could not recall on what date. I find that the tenant was deemed served with the landlord's

evidence on October 7, 2021, five days after its mailing, in accordance with sections 88 and 90 of the *Act*.

Issues 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*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 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 began on June 1, 2004 and ended on February 28, 2021. Monthly rent in the amount of \$1,020.00 was payable on the first day of each month. A security deposit of \$450.00 and a pet damage deposit of \$225.00 was paid by the tenant to the previous landlord. At the end of the tenancy the landlord returned the tenant's security deposit and pet damage deposit. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on January 25, 2021. The tenant testified that she received the Notice on January 25, 2021. The effective date of the Notice is March 31, 2021.

The Notice was entered into evidence and states that the rental unit will be occupied by the landlord or the landlord's spouse.

The tenant testified that she does not believe the landlord moved into the subject rental property because she found an online advertisement for the subject rental property. The

tenant entered into evidence a copy of the online advertisement that was posted on April 23, 2021 and seeks \$3,000.00 per month in rent. The advertisement states that the subject rental property is a four-bedroom unit. Both parties agree that the subject rental property is the top floor of a house and that the house also has two lower suites.

The tenant testified that the top floor suite is not suitable, in her opinion, for children. The tenant testified that the landlord evicted the basement tenant in 2017 for family use but no family member moved in. The tenant testified that the landlord evicted her to raise the rent and so she is entitled to recover 12 months' rent in accordance with the *Act*.

The landlord testified that he served the tenant with the Notice because he and his partner of 20 years were separating, and he could no longer live in the marital home. The tenant entered into evidence a text from the landlord dated January 25, 2021 which states:

Hi [tenant], I am going going [sic] through a tough time the last couple of years and we ending up deciding to go our separate ways. I would like to take over the [subject rental property]...It will be ideal as I have 3 young children sharing custody as well. I will write up a Two month notice for landlord use.

The landlord testified that he moved into the subject rental property on February 28, 2021 as he had been living in a hotel since he could not stay in the marital home. The landlord testified that he had no-where else to go. The landlord testified that in April of 2021 he had hopes of reconciling with his partner and thought that he might be able to move back into the marital home so he listed the subject rental property for rent in April 2021 . The landlord testified that a few weeks after posting the subject rental property for rent he and his partner got in a big fight and he realized that they would not be able to reconcile. The landlord testified that after the fight he pulled the advertisement down and has not re-listed the property.

The landlord testified that he continues to reside at the subject rental property and has no plans on leaving. In support of the landlord's testimony that he has resided at the subject rental property since February 28, 2021, the landlord entered into evidence the following documents which state that the landlord's address is the address of the subject rental property:

- September 20, 2021 Federal Election Voter Card,

- Bank statements from May 26, 2021 to September 22, 2021,
- Car insurance effective June 25, 2021 to December 18, 2021,
- Dentist invoice dated September 8, 2021,
- Credit card statements from May 25, 2021 to September 24, 2021, and
- Electricity statements from February 24, 2021 to September 20, 2021,
- Driver's licence

Both parties agree that during the tenancy electricity was not included in rent and the electricity was in the tenant's name during the tenancy.

The tenant testified that all landlord's evidence is from June to September 2021 and that the landlord has no evidence that he lived at the subject rental property from February to April 2021.

Analysis

Section 51(2) of the *Act* states that 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.

Residential Tenancy Policy Guideline #50 states:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Based on the numerous documents entered into evidence by the landlord bearing the address of the subject rental property, I find that the landlord has proved, on a balance

of probabilities that he has resided at the subject rental property since the tenant moved out. In making this decision I note that the landlord transferred the electricity bill to his name in February of 2021, which would be required for habitation. I also note that the landlord changed the address on the bank and credit card statements prior to receiving notice of this dispute from the tenant, therefore it cannot be said that the address change occurred because of the tenant's claim for 12 months rent. I find that it was reasonable for the landlord to take a few months to change his address on all his documentation while going through a separation, especially where there was a possibility of reconciliation.

I accept the landlord's testimony that he posted the add in the hopes of moving back into the marital home but that this did not ultimately occur. I find that compensation under section 51 of the *Act* is not triggered by the posting of the add but on whether or not the landlord actually moved in within a reasonable period of time. In this case, I have found that the landlord moved into the subject rental property the same day the tenant moved out. I find that steps were taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy. Based on the documentary evidence and in particular the September 20, 2021 Federal Election Voter Card, I find that the landlord has resided in the subject rental property for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Pursuant to my above findings, I dismiss the tenant's application for dispute resolution without leave to reapply. As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: November 05, 2021

Residential Tenancy Branch