



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on April 29, 2021, wherein the Tenant requested monetary compensation from the Landlord pursuant to section 51(2) of the *Residential Tenancy Act* (the "Act") and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on October 29, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant appeared on her own behalf. The Landlord called in and was represented by legal counsel, J.N., who was in turn assisted by an articled student, C.K.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

Background and Evidence

In support of her claim the Tenant testified as follows. She confirmed that the tenancy began August 1, 2021. Monthly rent was \$700.00 per month.

The Tenant stated that the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use on December 24, 2020 (the "Notice"), which was posted to her rental unit door on that day. The reasons cited on the Notice were as follows: "The rental unit will be occupied by the landlord or the landlord's spouse".

The Tenant did not dispute the Notice and moved out on March 1, 2021. She confirmed that she did not pay rent for the month of February as she was entitled to a free months' rent pursuant to the Notice and section 51 of the *Act*.

The Tenant alleged the Landlord did not use the rental property for the stated purpose. The Tenant confirmed that she did not have any documentary evidence to support a finding that the property was not used for the stated purpose; rather, she suspected that the Landlord did not use the property for the stated purpose because she felt that from the moment the Landlord indicated that she wanted to use the space again, her reasons were inconsistent; for instance, at one point she was told the Landlord wanted to use it for her nephew, then she said she wanted office space, then she didn't take the job, and then she issued the Notice indicating she was going to reside there. The Tenant stated that she did see a vehicle at the property which she didn't recognize but had no way of confirming whose vehicle it was.

In response to the Tenant's claim, the Landlord testified as follows. She confirmed that she issued the Notice for her own use. She testified that she spent a couple weeks cleaning the unit, made the space into a dedicated guest room, home office, and a space for her daughters, one who has down syndrome, to do in person therapy and a space for her daughters to play. The Landlord confirmed that the rental unit continues to be part of her home and that she did not rent the property to anyone else, and that she has used the property for her own use.

Analysis

Section 51 of the *Act* provides a tenant with compensation in the event they receive a notice pursuant to section 49 and reads as follows:

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.

In this case the Tenant alleges the Landlord did not use the property for the stated purpose and that as a result she should be entitled to monetary compensation pursuant to section 51(2) of the *Act*.

In order to determine whether the Tenant are entitled to compensation pursuant to section 51(2) I must determine whether the Landlords took steps to accomplish the stated purpose for ending the tenancy or whether the property was in fact used for that purpose. If steps are not taken, or the property is not used for the stated purposes, I must then determine whether *extenuating circumstances* prevented this.

Based on the evidence before me, I find the Landlord took steps to accomplish the stated purpose for ending the tenancy within the six months from the date of the Order of Possession. The evidence confirms that the Landlord occupied the rental unit following the end of the tenancy. She made a guest room, an office, a play room, and a therapy room for her disabled daughter. There was no evidence before me to support a finding that the property was used for any other purpose. In all the circumstances, I find the rental unit was used for the stated purpose.

I therefore dismiss the Tenants' claim for monetary compensation pursuant to section 51(2) of the *Act*.

Having made this finding, there is no need for me to consider and determine whether extenuating circumstances prevented the Landlord from occupying the rental unit, which was the reason for issuing the Notice.

Conclusion

The Tenants' application for compensation pursuant to section 51(2) of the *Act* is dismissed.

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 1, 2021

Residential Tenancy Branch