Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FFT

Introduction

The former tenants (hereinafter the "tenant") filed an Application for Dispute Resolution on April 26, 2021. They are seeking compensation related to the landlord ending the tenancy, and the Application filing fee.

The matter proceeded by hearing on October 26, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Preliminary Matter

In the hearing, the tenant stated they provided notice of this hearing to the landlord in person. The landlord acknowledged they received the document advising of this hearing, and a "key". This is the video and image files the tenant provided on USB drive. This method of providing digital evidence in the form of photos, audio or video, is permitted by the *Residential Tenancy Branch Rules of Procedure*. I find the tenant served the landlord their evidence in due course as required for this hearing.

The landlord provided their evidence material to the tenant via registered mail. This included digital evidence on USB. They provided images of the envelope, the sent material, and the envelope bearing the registered mail decal. This address was that provided by the tenant on their Application and forwarded to the landlord on that document. On this evidence, I am satisfied the landlord served the tenant all their evidence as required by the *Act* and the *Rules of Procedure*.

The postal item was unclaimed and returned to the sender. The tenant in the hearing specified that they had moved since their Application; however, they paid for mail forwarding service. They could not identify the reason why they would not have

received this material. The tenant consented to proceed with the hearing despite this. With the tenant's consent, the hearing proceeded. No pieces of the evidence are precluded from my consideration in this hearing.

Issues to be Decided

Is the tenant entitled to monetary compensation for the landlord ending the tenancy, pursuant to s. 51 of the *Act*?

Is the tenant entitled to recover the filing fee for the tenant's Application, pursuant to s. 72 of the *Act*?

Background and Evidence

Neither party provided a copy of the tenancy agreement. The tenant provided basic details on their Application: a tenancy end date of September 1, 2020, and a paid security deposit of $475. The tenant in their Application claims for an award based on the monthly rent, which they indicated was $1,100 when providing a calculation of their claim. The landlord corrected this to say the rent was $1,097.50 per month, which meant that each month they gave $2,50 back to the tenant.

The tenancy ended on August 31, 2020. The landlord issued a Two-Month Notice to End Tenancy for Landlord's Use in mid-2021. The tenant in a separate hearing challenged this; however, the arbitrator found the notice was valid, and the end-of-tenancy date was confirmed to be August 31, 2020.

The tenant gathered evidence to show that someone moved into the rental unit in April 2021. They had other people who let them know, as well as video from January 30, 2021. They provided material from the marketplace that allegedly shows the landlord advertised the rental unit. They submit the rental unit was empty from September 2020 to April 14, 2021.

A prior neighbour let the tenant know that the place was still empty. They have shared access to the same area as the rental unit in question, and they can see into the property clearly from a shared fence entrance. A message on April 8 in the tenant's evidence shows: "Yo I have neighbours now, im not sure if that's allowed yet".

The tenant's video in evidence shows a friend of the tenant going to the rental unit and knocking on the door, to which no one answered. The upstairs unit – immediately

above this basement unit rental suite – came out and informed the friend that “no one is living here.” That video was from January 30, 2021. The tenant submitted this was genuine information from the upstairs neighbour.

The landlord presented that their need for the rental unit was justified, as found in the previous hearing. The landlord’s video evidence shows the tenant visiting by vehicle several times, to pick up the next-door neighbour, so the landlord knew the tenant was using the neighbour to monitor the situation at the rental unit. The landlord provided that their in-laws *did* move in after a brief clean-up after the tenancy.

The landlord also maintained they did not rent to any other tenants. Their in-laws (who were the originally intended family members to live in the rental unit) moved in after their own unit flooded. In January 2021, the landlord’s nephew came to town, and had to self-isolate in the in-laws own separate condo. By March 5, that nephew got a job, and the in-laws informed the landlord they would thereafter move out from the rental unit and back into their own condo.

The landlord is aware they were not allowed to rent to any other tenants for six months. The period from September to April is almost 8 months. They reiterated that during this time the rental unit was only occupied by the landlord’s own family. They were isolating because of public health measures, and using a front door in the rental unit. The landlord gave the in-laws instruction not to answer any knocking from the back door, knowing that the tenant “was coming by at the house to check and monitor us”, as stated in their written submission. This was based on the landlord’s final interaction with the tenant who stated “I have ways, I’ll find you, I’ll get you. . .” evidently based on resentment from ending the tenancy, or disbelieving the landlord intended to use the rental unit for their own purposes.

The landlord also addressed specific points in the tenant’s own evidence:

- they confirmed with the neighbours – i.e., those who reported on the vacant rental unit – and the neighbour stated “that’s ridiculous – I know your in-laws live there.”
- the upstairs neighbour in the tenant’s video was the landlord’s own mother – the response was intended more as: ‘nobody other than my family there [i.e., in the rental unit]’ – so the tenant took this as confirmation that the rental unit was empty

Additionally, in their written submission the landlord explained how another relative, a cousin, asked to use the rental unit for 1.5 months until they could gain possession to their own separate purchase. The landlord “turned them down” because of the

situation, with use only for personal or family use – this cousin is not a close family member. After the landlord's in-laws moved out, the landlord's mother "took use of the basement."

The landlord also submitted the text-message dialogue they had with a separate individual who was inquiring on the availability and condition of the rental unit when it became available in April 2021. This conversation then appeared in the tenant's own evidence from what they submitted to the landlord for this hearing. This made the landlord suspicious that the tenant was setting the landlord up. This dialogue does appear in the tenant's own evidence for this hearing.

Analysis

In this hearing, the tenant bears the burden of proof to show their claim is valid based on the evidence. They applied for an award based on $1,100 per month rent. They did not show in document format that this is the amount of rent they paid, and the landlord has stated otherwise. With the burden resting on the tenant, I find they did not show the amount of $1,100 was correct – indeed this information was omitted from their Application. Based on the evidence of the landlord, and minus proof to the contrary, I find the rent amount was $1,097.50.

Under s. 49 of the *Act* a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. There is compensation awarded in certain circumstances where a landlord issues a Two-Month Notice. This is covered in s. 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 . . .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 of 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 . . .if, in the director's opinion, extenuating circumstances prevented the landlord . . . 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 scenario, I find the landlord accomplished the stated purpose for ending the tenancy. The evidence shows they used the rental unit for the reason indicated, for at least 6 months' duration. I give weight to the landlord's direct account in this hearing.

As stated above, the tenant bears the burden of proving their claim, and they have not done so through the evidence they present here. I find the video they present is not solid evidence that the unit was unoccupied or used for other purposes. A friend of the tenant approaches the unit at night and lies to the upstairs neighbour about the purpose of their visit and knocking at the door. This is at night, and I find it likely that occupants may choose to not answer the door at that time. After this, the upstairs neighbour answers "Nobody here", which does not equate to confirmation that the unit is unoccupied. Then a leading question from the visitor "Nobody lives here?" to which the neighbour answered: "No". This very brief dialogue does not stand as proof positive that the rental unit was unoccupied by January 30, the date of the video. I give no weight to this evidence.

Other than this, the tenant relies on messages from the next-door neighbour who told them the rental unit was occupied in April 2021. This does not stand as proof that the unit was either empty or occupied by persons other than the landlord's immediate family members up until that time. There is no evidence to bolster this statement from the next-door neighbour; therefore, I find it is speculative. Certain indications may be in place for the tenant to believe the rental unit was not occupied by the landlord's own family members for the period in question; however, I am not at liberty to make the same inference based on the evidence presented here.

The landlord's detailed explanation presented as it is with reference to dates, family events and other family members, carries more weight here. I find it is acceptable that the in-laws occupied the rental unit for several months until April 2021, after which time they returned to their own condo.

I find the landlord has offset the burden of proof. That is to say, the landlord's evidence is stronger in showing that they used the rental unit for the stated purpose. I conclude that s. 51(2) does not apply in this situation, and there is no monetary award to the tenant here. I dismiss the tenant's claim, without leave to reapply.

Because they were not successful in this claim, I find the tenant is not entitled to recover the $100 filing fee.

Conclusion

I dismiss the tenant's Application, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 22, 2021

Residential Tenancy Branch