



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on June 9, 2021 seeking compensation from the Landlord. This is related to the Landlord's issuance of a Notice to End Tenancy for the Landlord's Use of Property (the "Two-Month Notice") issued on January 22, 2021. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on December 7, 2021.

The Tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The Landlord did not attend the telephone conference call hearing.

Preliminary Matter

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Landlord with the Notice of Dispute Resolution for this hearing. This means the Tenant must provide proof that the document has been served using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The Tenant set out how they served this notice to the Landlord via registered mail on July 2, 2021. This is 2 days after they received the notice of this hearing from the Residential Tenancy Branch. They provided an image of the receipt and the tracking number label used for registered mail. They provided a tracking record for this number, showing its delivery on July 2, then the Landlord's refusal on July 5. The package was returned to the post office and then back to the Tenant on July 5th. In the hearing, the

Tenant speculated that the Landlord went to the depot after obtaining notification of the registered mail, only to see the Tenant's name as sender. The Landlord then refused to accept the mail item for that reason.

Based on the submissions of the Tenant, I accept they served the notice of this hearing, and their prepared documentary evidence, in a manner complying with section 89(1)(c) of the *Act*. I find the Landlord was notified of this hearing. The hearing thus proceeded in the Landlord's absence.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the Notice to End Tenancy for the Landlord's Use of Property, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

In the hearing, the Tenant gave affirmed testimony. They described the tenancy agreement they had with the Landlord which was an oral agreement. This tenancy started on June 9, 2019 and ended on March 31, 2021 when the Tenant moved out. The Tenant confirmed the rent was \$1,500 per month, due on the final day.

The Landlord served the Two-Month Notice by registered mail and left a copy in the Tenant's own mailbox at the rental unit. The Tenant provided a copy as evidence. This shows the issue date on January 22, 2021, for the final end-date of March 31, 2021. The Landlord indicated that the landlord or the landlord's spouse would be occupying the rental unit. The Tenant confirmed they did not challenge this Two-Month Notice through a dispute resolution process and left the rental unit on March 31, 2021.

The Tenant maintained contact with their immediate rental unit neighbour. On May 25, that neighbour advised the Tenant that other Tenants moved into the rental unit. This was via a Facebook message; an image of this is in the Tenant's evidence. This is labelled May 25, 5:24pm. The neighbour also noted: "Just saw them".

The Tenant provided two photos that the neighbour attached to the Facebook message. These show a vehicle -- different from the Landlord's make and model known to the Tenant and stated in the hearing -- parked in the reserved rental unit parking space in the garage.

The Tenant in the hearing presented that they had an earlier message from the Landlord that they intended to sell the rental unit. This was a communication in the form of a request to the Tenant to leave in order to assist the Landlord in facilitating this sale. A text message from December 3, 2019 in their evidence notes: "I thought you were only living there for a couple of months, I want to sell it soon." The Landlord then informed the Tenant they would put the rental unit on the market for April 1st the following year.

In the hearing, the Tenant provided more very recent information that also shows the Landlord is not occupying the rental unit. The strata and building manager were having trouble contacting the Landlord, needing to do so because of an unceasing alarm sounding within the rental unit for approximately the last week. The neighbour notified the Tenant of this more recently.

In the hearing, the Tenant stated that the Landlord "100% wants to sell the unit."

Analysis

Under s. 49(5) of the *Act* a Landlord may end a tenancy if a purchaser, or a close family member, intends in good faith to occupy the rental unit.

A Tenant's compensation in these circumstances is governed by s. 51 which provides:

(2) Subject to subs. (3), the Landlord . . . 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 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 subs. (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 order to make a finding of fact, and thereby determine an entitlement to compensation, I shall determine whether the Landlord a) took steps to accomplish the stated purpose for ending the tenancy; or b) used the unit for family occupancy for at least 6 months' duration. If the steps taken, or family use, are not established in the evidence, I shall then determine whether extenuating circumstances prevented this.

From the Tenant's evidence, I find the Landlord did not use the unit for their family occupancy as they so indicated on the Two-Month Notice. There is no evidence to show the Landlord occupied the rental unit at any time. There *is* evidence, by contrast, to show other Tenants occupied the rental unit at least by May 25. This is the garage photos and message from the neighbour informing the Tenant of this. From this I conclude the rental unit was not used by the Landlord's family for at least 6 months' duration.

The Tenant did not provide proof that the Landlord was selling the rental unit a short time after the tenancy ended; however, the evidence they did provide shows earlier messaging indicating the Landlord's intent. This tilts toward the conclusion that the Landlord would not occupy the rental unit and had no intention of doing so.

I find the Tenant provided sufficient evidence to show the Landlord did not use the unit for their family occupancy. There is no evidence the Landlord took steps toward this within a reasonable period of time. The Landlord did not attend the hearing; therefore, there was no presentation of extenuating circumstances. I find no such circumstances were present.

For these reasons, I find the Tenant has presented sufficient evidence to show they are entitled to compensation for a breach of the *Act* by the Landlord. I grant the Tenant compensation in the amount specified by s. 51(2), the equivalent of twelve times the amount of the monthly rent of \$1,500.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the Tenant was successful in their claim, I find they are entitled to recover the \$100 filing fee from the Landlord.

Conclusion

Pursuant to s. 51 and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$18,100.00. The Tenant is provided with this Order in the above terms, and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file the Order in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: December 8, 2021

Residential Tenancy Branch