



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation of \$10,000.00 from the Landlord related to a Notice to End Tenancy for Landlords' Use of Property.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlords. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about it. During the hearing the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlords did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlords each with the Notice of Hearing documents by Canada Post registered mail, sent on February 13, 2021. The Tenant provided Canada Post tracking numbers as evidence of service. I find that the Landlords were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlords.

Preliminary and Procedural Matters

The Tenant provided her email address in the Application, but she did not have one for the Landlords; therefore, the Decision will be sent to their mailing address. The Tenant confirmed her understanding that the Decision would be emailed to her and mailed to the Landlords, with any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised her that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

In the hearing, the Tenant confirmed what the tenancy agreement states about the tenancy. She confirmed that it began on May 19, 2016, with a monthly rent of \$885.00, due on the first day of each month, plus \$50.00 for parking. The Tenant confirmed that she paid the Landlord a security deposit of \$400.00, and no pet damage deposit; however, the Tenant said that the Landlord returned the security deposit at the end of the tenancy when the Tenant vacated the rental unit on March 31, 2021.

The Tenant moved out of the rental unit after the Landlords had served her with a Two Month Notice to End Tenancy for Landlord's Use of Property, dated February 13, 2021 ("Two Month Notice").

The Tenant submitted a copy of the Two Month Notice, which was signed and dated February 13, 2021, and which has the rental unit address. The Two Month Notice was served via registered mail on February 13, 2021, with an effective vacancy date of April 30, 2021, and it was served on the grounds that the Landlord is a family corporation, and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. I note that on the Two Month Notice, the Landlord is not identified as a corporation. While this is not a review of the validity of the Two Month Notice, I note this for the record, since the Landlords' names

in the Application reflect the names on the Two Month Notice and the tenancy agreement.

In the hearing, the Tenant said:

The Landlords didn't act in good faith in putting a person with voting shares or someone they're related to into the apartment. She rented to someone two weeks after we moved out. They have no relation to the Landlords, so when looking on the rules, if they don't act in good faith, they must pay one year of rent compensation.

The Tenant referred me to her evidentiary submissions, which included texts and evidence from others supporting the Tenant's assertion that the Landlords are not using the residential property for the purpose stated in the Two Month Notice

The Tenant submitted a text she received from [L.L.], which said:

To it may concern: I [L.R.L.] would like to let you know that I have personally spoken with the new tenant in [rental unit address]. His name is [R.A.]. He told me that he is not a relative of the owner, landlord [M.B.] and that he moved in on April 19, 2021. His phone number is [telephone number]. And if needed I am prepared to swear in court on a bible that this is a true statement. Thanks [L.L.].

The Tenant submitted another text from an unidentified person who said:

I just talked to the people that moved into your suite and they are not relatives and will help you.

Analysis

Based on the undisputed documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 (4) of the Act states that a landlord who is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. Section 49 of the Act also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

Section 51 of the Act sets out a tenant's compensation, after the landlord serves the tenant with a notice to end the tenancy under section 49 – landlord's use of property. Pursuant to section 51(2), such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord 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.

The undisputed evidence before me is that a tenant unrelated to the Landlords moved into the rental unit on April 19, 2021 – 19 days after the tenancy ended. There is no evidence before me that a close family member of a person owning voting shares in the family corporation moved into the residential property at all, let alone within a reasonable period after the effective date of the Two Month Notice.

It has been over eight months since the Tenant vacated the rental unit, based on the Two Month Notice that the Landlords served to her. Based on the evidence before me, I find that the Landlords have not proceeded with the stated purpose of the Two Month Notice, pursuant to section 49 of the Act. I, therefore, find that the Tenant is eligible for compensation under section 51 (2) of the Act. Pursuant to sections 51 and 67 of the Act, I award the Tenant with **\$10,620.00** or 12 times the monthly rent from the Landlords.

Conclusion

The Tenant is successful in her Application, as she provided sufficient evidence that the Landlords failed to fulfill the purpose set out in the Two Month Notice they served on the Tenant. Pursuant to section 51(2) of the Act, the Tenant is eligible for compensation of 12 times the monthly rent.

The Tenant is granted a Monetary Order from the Landlords of **\$10,620.00**, pursuant to sections 49, 51, and 67 of the Act.

This Order must be served on the Landlords by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 02, 2021

Residential Tenancy Branch