



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 by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 21, 2021 (the “Application”). The Tenants applied for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated March 19, 2021 (the “Notice”).

The Tenants appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenants who did not have questions when asked. I told the Tenants they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenants provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenants' evidence.

Tenant A.S. testified that they emailed the Landlord the hearing package and their evidence on July 17, 2021. Tenant A.S. testified that they had the Landlord's email address from the start of the tenancy because the Landlord emailed them the tenancy agreement to sign. Tenant A.S. testified that they communicated with the Landlord at the email address used numerous times throughout the tenancy. The Tenants submitted the email sent to the Landlord with the hearing package and their evidence attached.

Based on the undisputed testimony of Tenant A.S. and the email submitted, I am satisfied pursuant to section 71(2)(c) of the *Residential Tenancy Act* (the “Act”) that the hearing package and evidence were sufficiently served on the Landlord. In coming to this decision, I have considered sections 88(j) and 89(1)(f) of the *Act* as well as sections 43(1) and (2) of the *Residential Tenancy Regulation* (the “Regulations”). I am satisfied

the Tenants were permitted to serve the Landlord by email because I accept the undisputed testimony of Tenant A.S. that the parties communicated by email regularly during the tenancy. I am satisfied based on the undisputed testimony of Tenant A.S. that the hearing package and evidence were sent July 17, 2021. I find pursuant to section 71(2)(b) of the *Act* that the Landlord received the hearing package and evidence on July 20, 2021. In coming to this decision, I have considered section 44 of the *Regulations*. I also find the Tenants complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenants were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Tenants. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Are the Tenants entitled to compensation related to the Notice?

Background and Evidence

The Tenants sought \$12,300.00 in compensation pursuant to section 51 of the *Act* based on the Landlord failing to follow through with the stated purpose of the Notice.

Tenant A.S. testified as follows.

The “Contract To Rent” in evidence was the tenancy agreement between the parties. The tenancy started November 01, 2017. The Tenants were told it was a one-year lease and then month-to-month. Rent at the end of the tenancy was \$1,025.00 per month. The tenancy ended May 31, 2021.

The Notice in evidence was served on the Tenants and the tenancy ended pursuant to the Notice. The grounds for the Notice were that the rental unit would be occupied by the Landlord or the Landlord’s close family member. The Notice states that the Landlord or the Landlord’s spouse and the father or mother of the Landlord or Landlord’s spouse would occupy the rental unit.

One week after the Tenants moved out of the rental unit, the Landlord had new tenants move into the rental unit. The new tenants were previously friends of the Tenants. One

of the new tenants was the child of the upstairs tenant. The second new tenant was the girlfriend of the other new tenant. Neither of the new tenants are a close family member of the Landlord.

The text in evidence time stamped 16:55 is a text conversation with the upstairs tenant on June 21, 2021. The upstairs tenant acknowledged in the text conversation that the Landlord offered the rental unit to the new tenants who took it.

The text in evidence time stamped 16:47 is with one of the new tenants. Tenant A.S. stated, "So...I know you and [S.] moved into our old suite I'm not mad it's a great suite and will serve you guys well". The new tenant replied, "Thank you".

The videos in evidence are videos from social media showing the new tenants in the rental unit.

Analysis

I am satisfied based on the undisputed testimony of Tenant A.S. and the Notice in evidence that the Tenants were served with the Notice issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...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 the landlord...does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been 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...from paying the tenant the amount required under subsection (2) 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, and
 - (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Based on the undisputed testimony of Tenant A.S., videos and text messages in evidence, I accept that the Landlord or a close family member did not move into the rental unit and instead two new tenants, neither of which are a close family member of the Landlord, moved into the rental unit one week after the Tenants vacated. Given this, I am satisfied the Landlord did not accomplish the stated purpose of the Notice within a reasonable period after the effective date of the Notice and did not use the rental unit for the stated purpose of the Notice for at least six months beginning within a reasonable period after the effective date of the Notice.

I note that it is the Landlord who has the onus to prove that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the Notice and the rental unit has been used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the Notice. The Landlord did not appear at the hearing or provide any evidence for the hearing and therefore failed to prove these points. Further, the Tenants provided undisputed testimony and documentary evidence which satisfies me that the Landlord did not accomplish the stated purpose of the Notice within a reasonable period after the effective date of the Notice and did not use the rental unit for the stated purpose for at least six months beginning within a reasonable period after the effective date of the Notice.

As stated in section 51(3) of the *Act*, the Landlord can be excused from paying the required compensation if extenuating circumstances prevented the Landlord from

following through with the stated purpose of the Notice. However, the Landlord has the onus to prove extenuating circumstances. The Landlord did not appear at the hearing or provide any evidence for the hearing and therefore failed to prove extenuating circumstances.

Given the above, section 51(2) applies and the Tenants are entitled to 12 times the monthly rent payable under the tenancy agreement. I accept the undisputed testimony of Tenant A.S. that rent at the end of the tenancy was \$1,025.00 per month and award the Tenants \$12,300.00. The Tenants are issued a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenants are entitled to \$12,300.00. I issue the Tenants a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Act*.

Dated: January 14, 2022

Residential Tenancy Branch