



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

The former Tenant (hereinafter the “Tenant”) filed an Application for Dispute Resolution on June 30, 2021. They are seeking compensation related to the Landlords (the “Landlord”) ending the tenancy.

The matter proceeded by hearing on January 18, 2022 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. Each party confirmed they received the prepared evidence of the other and on this basis, I proceeded with the hearing of the issue listed below.

Issues to be Decided

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

Background and Evidence

The Tenant provided a copy of the tenancy agreement. This tenancy started on May 21, 2014. The rent amount increased over the years from \$750 through to the amount of \$875. The rental unit is a basement unit at the residential address where the Landlord lives upstairs.

The Landlord issued the Two-Month Notice to End Tenancy for Landlord’s Use of Property (the “Two-Month Notice”) on January 14, 2021. This set the final move-out date for March 31, 2021. The reason indicated on page 2 of the Two-Month Notice is that “The child of the landlord or landlord’s spouse” will occupy the unit.

In the hearing the Landlord stated the Tenant asked for a later move-out date of April 30, 2021. The text message in the evidence, dated March 11, shows the Landlord agreed with the Tenant for that later move-out date, with the Tenant being responsible for the April rent. In a March 28 text message, the Tenant then asked for the move-out at the end of March 2021. They asked for the Landlord's help with moving expenses.

On April 1, the parties met at the rental unit. The Landlord returned the Tenant's security deposit. They also gave the Tenant an extra \$400 to assist with moving expenses. A document in the Landlord's evidence shows the Tenant's signature under a statement stating: "I fully release the Landlord for any subsequent claims relating to my rental of the basement suite . . ."

For one part of their claim, the Tenant asks for \$875 as their compensation for one month of rent to which they are entitled as per s. 51(1) of the *Act*. The Tenant's handwritten payment log is in the evidence; the Tenant submits this shows their payment to the Landlord for that final month of March 2021. On this point the Tenant also submits that they are entitled to \$475, being the remainder amount of the \$400 provided by the Landlord on April 1.

The Tenant also applies for 12 months of the rent amount, being the amount owed where the Landlord did not accomplish the stated purpose for ending the tenancy within a reasonable period after the end-of-tenancy date. The amount is \$10,500.

The Tenant submits the Landlord was unavailable on March 30, 2021, the purported last day of the tenancy. Instead, they had to meet with the Landlord on April 1 with the Landlord to review the condition of the rental unit and return the key. The Tenant's written submission is that they noticed the rental unit was still vacant in May 2021. It was because of this they asked the Landlord if it was possible for them to move back in.

The Landlord also presented that the Tenant on May 8 requested a return to the rental unit. The Landlord declined and stated they were still in the process of fixing up the unit for their child to move in. The repairs were taking longer than anticipated, due to public health restrictions impeding contractors' visits.

The Tenant visited to the rental unit on June 16, ostensibly to look for their missing passport. They took video of the interior of the rental unit when allowed entrance by the Landlord. This video appears in the Tenant's evidence, showing no floors throughout the rental unit.

The Landlord's child moved into the rental unit on July 1, 2021. The Landlord posits this is a reasonable timeline after they issued the Two-Month Notice to the Tenant, "especially given that repairs were slowed due to Covid" as stated in their written submission.

The Tenant submits the fact that the Landlord returned the security deposit to the Tenant in full means the unit was not unlivable, nor that substantial repairs were necessary. They submit the Landlord has not provided sufficient evidence to show how public health restrictions slowed work down. Three months – being the amount of time the unit remained unoccupied since the effective end-date of March 31, 2021 – is not a reasonable amount of time. Additionally, the phone bill submitted by the Landlord indicates an even later service start-up for the Landlord's child in the rental unit, in August 2021.

In the hearing, the Landlord confirmed that the video submitted by the Tenant showed the state of the rental as on June 16. They submitted there was wear and tear after the Tenant had moved out after 6 years. Removal of the carpet with the intention of installing flooring required more work than anticipated, in a situation where "we realized you can't just put down flooring." They confirmed their child moved into the rental unit on July 1, and "this is not an unreasonable amount of time" with the end of tenancy being April 30. Immediately after the Tenant moved out at the end of March, their child had made more immediate plans for the month of April, believing that the Tenant would occupy the rental unit until that time as they requested.

Analysis

Under s. 49(5) of the *Act* a landlord may end a tenancy if a purchaser asks the landlord in writing to end the tenancy, in good faith, for their own occupancy of the rental unit.

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

- (1) A tenant who receives a notice to end a tenancy under section 49 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.

I find the parties by agreement set the end-of-tenancy date to April 30, 2021. I find this is the effective date of the Two-Month Notice. This does not cancel or otherwise make the Two-Month Notice of no effect. After the Landlord's agreement to the Tenant's request on March 11, the Tenant then advised the Landlord, on March 28, they would leave on March 31.

Also applicable in these circumstances is s. 50, where the Tenant is choosing to end the tenancy earlier than the agreed-upon date of April 30. This section permits a tenant to end the tenancy earlier; however, there are restrictions where a tenant must give a landlord “at least 10 days’ written notice to end the tenancy on a date that is earlier than the effective date of the landlord’s notice”. The Tenant here advised the Landlord of the end of tenancy 3 days in advance, via text message. There is no refund for any March rent paid and s. 50(2) does not apply because the Tenant did not pay rent for April. In effect, April is the amount granted to the Tenant under s. 51(1).

The \$400 paid by the Landlord to the Tenant is separate from the consideration of rent amounts owing. It was not tendered by the Landlord to the Tenant for that reason and was not contemplated at the time by either party as such. I find the Landlord had no intent of dodging obligations under the *Act* or the tenancy agreement by making the Tenant sign the release. As they stated in the hearing, this was simply to avoid the Tenant coming back and asking for more money. I find the parties agree that the Landlord paid this money to the Tenant for assistance with moving expenses. I agree with the Tenant that their signing the release does not nullify the *Act* or the tenancy agreement for any other purpose, as per s. 5 of the *Act*. I also find the Landlord made no statement or submission that the signed release blocks the Tenant from seeking any other legal remedy.

The *Act* s. 51 provides for other compensation in these circumstances:

- (2) Subject to subsection (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 the landlord or purchaser, as applicable, 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 . . . 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 . . . for that stated purpose for at least 6 months’ duration, beginning within a reasonable period after the effective date of the notice.

I find above the effective date of the One-Month Notice was April 30, 2021. I find the Landlord has not established that the rental unit was used for the stated purpose within a reasonable period after that date. The two-month timeframe for carpet removal and flooring installation is

not reasonable, minus detail showing substantial uncontrollable delay or other extenuating circumstances.

The Landlord did not overcome the burden of proof to show the time period was reasonable in the circumstances. There is no evidence of the timeline of the work on carpet and flooring, when that work commenced, or more substantial detail on when delays occurred, or challenges experienced along the way. There was one reference to public health measures in place at the time; however, there was no substantial detail on triggering events or delays. I find the evidence does not show extenuating circumstances were present preventing the Landlord from accomplishing the stated purpose for ending the tenancy within a reasonable timeframe.

For these reasons, I find the Tenant is entitled to compensation. 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 \$875. This is \$10,500.

Conclusion

Pursuant to s. 51, I grant the Tenant a Monetary Order in the amount of \$10,500. 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: January 26, 2022

Residential Tenancy Branch