



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKBRIDGE LIFESTYLE COMMUNITIES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for a monetary order in the amount of \$11,308.00, for 12 months' compensation due to the landlords failing to comply with the reason stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 5, 2021 (2 Month Notice), and to recover the cost of the filing fee.

The tenant, DS (tenant), an agent for the landlord, GM (agent), the resident manager for the landlord, LL (manager) and counsel for the landlord, HD (counsel) attended the teleconference hearing. All participants except counsel were affirmed as counsel has already sworn an oath as counsel. The hearing process was explained, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties/counsel were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As neither party raised any concerns regarding the service of documentary evidence. Based on the above, I find the parties were sufficiently served according to the Act.

Preliminary and Procedural Matters

The participants were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The participants were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the participants were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. None of the participants had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the participants confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on November 1, 2017. Original monthly rent was \$900.00, which was increased during the tenancy to what the parties agreed was the final monthly amount of \$945.60 per month and was always due on the first day of each month.

There is no dispute that the tenant was served with the 2 Month Notice dated February 5, 2021 and that the 2 Month Notice had an effective vacancy date of April 30, 2021. The tenant did not dispute the 2 Month Notice and vacated the rental unit on April 30, 2021.

The reason stated on the 2 Month Notice has been copied and pasted below:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

☐ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

☐ 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.

☐ All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

☐ The tenant no longer qualifies for the subsidized rental unit.

(If you are giving this Notice because the purchaser asked for notice to be given)

The landlord submits that a representative of the landlord moved into the rental unit, Mr. E as of June 1, 2021. The landlord submits that the tenant was an employee of the landlord and had resigned in May 2019. The tenant stated that they continued to occupy the rental unit as a non-employee after resigning as an employee of the landlord; however, the tenancy began before they were an employee of the landlord so was not employment related.

The manager and counsel confirmed that they issued the wrong form to the tenant and stated that due to the tenant not disputing the 2 Month Notice, it was too late to issue the correct notice under the Act described below. Counsel submits that if the caretaker, Mr. E, being a representative of the landlord, does not satisfy the stated purpose on the 2 Month Notice, in the alternative, the landlord should only be limited to the compensation under Form 29 (RTB-29), the Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit (4 Month Notice).

In addition, counsel submits that the landlord could have also issued a 1 Month Notice for Cause citing that the employment has ended with the landlord. When asked why the landlord did not issue the 1 Month Notice, counsel replied in essence that it was a case of "whoops" or "whoopsie".

The tenant denies that the tenancy was employment-based as the tenant was working elsewhere when the tenancy began and that only later, did the tenant begin to work for the landlord, so the tenancy was never related to their employment. As a result, the tenant stated that the information being provided was not exactly true by the landlord and via counsel. The tenant also stated that there was no mistake in the form served and that the argument by counsel is just "fluff" and made up.

Counsel closed by stating that a landlord's representative did end up occupying the rental unit and that the landlord always had intention to have a landlord representative

in the rental unit. Furthermore, counsel reiterated that by the time the tenant vacated, it was too late to issue a 4 Month Notice.

Analysis

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

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

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, 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**

(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.

[emphasis added]

Firstly, I reject counsel's submission that a landlord's "representative" meets the definition listed on 2 Month Notice as the 2 Month Notice clearly states that the landlord or close family member of the landlord will be occupying the rental unit and **does not** state a representative.

Secondly, counsel submits that it was too late for the landlord to issue a 4 Month Notice, which would have been the correct notice once the tenant vacated the rental unit. I find the landlord is liable for the notice they actually issued on the tenant, not the notice they wish they had served or meant to have served on the tenant.

Thirdly, counsel submits that the tenant should be compensated, at most, under the 4 Month Notice, that the landlord should have served on the tenant, which I note is the same compensation due to the tenant as the 2 Month Notice, which is the equivalent of one month's rent, so as a result, I find this argument illogical.

Finally, the only other option for the landlord is to rely on section 51(3) of the Act which states:

51(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 subsection (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.

[emphasis added]

Based on the evidence before me, I find the landlord has provided insufficient evidence of extenuating circumstances as I find that issuing the incorrect notice on the tenant does not meet the definition of eventuating circumstances. Therefore, I find the landlord failed to exercise reasonable due diligent before issuing an eviction notice, the 2 Month Notice.

In addition, I find that the landlord did not use the rental unit for the stated purpose as required by section 51(2) of the Act and I find that the landlord did not have extenuating circumstances that prevented them from using the rental unit for the stated purpose for at least 6 months from April 30, 2021, which was the effective vacancy date listed on the 2 Month Notice. Therefore, I find the landlord has failed to provide sufficient evidence that they complied with the reason stated on the 2 Month Notice and are liable for issuing a 2 Month Notice on the tenant. I find the tenant's claim is fully successful and I grant the tenant **\$11,347.20** in compensation from the landlord, comprised of twelve times the monthly rent of \$945.60 pursuant to section 51(2) of the Act.

As the tenant's application was fully successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find the tenant has established a total monetary claim of **\$11,447.20** comprised of \$11,347.20, which is 12 times \$945.60 monthly rent, plus the \$100.00 filing fee.

Conclusion

The tenant's application is fully successful.

I find the landlord failed to use the rental unit for the stated purpose and instead permitted a landlord representative to move into the rental unit contrary to the reason stated on the 2 Month Notice. I find the landlord has also failed to prove extenuating circumstances that prevented them from complying with the reason listed on the 2 Month Notice.

The tenant is granted a monetary order pursuant to section 67 of the Act, in the amount of \$11,447.20 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord is reminded that they can be held liable for all enforcement costs related to the monetary order under the Act.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord.

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: February 16, 2022

Residential Tenancy Branch