



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALL STAR DEVELOPMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNETC, FFT

Introduction

On July 27, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with H.D. attending as counsel for the Tenant. B.U. and S.S. attended the hearing later as witnesses for the Tenant. However, the Landlord did not attend at any point during the 46-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of H.D., provided a solemn affirmation.

H.D. advised that the advocacy office listed as an Applicant on the Application was not actually a Tenant involved in this dispute. In addition, the name of the Landlord’s business was not fully indicated on the Application. As such, the Style of Cause on the first page of this Decision has been amended to reflect these changes.

The Tenant advised that she served her Notice of Hearing and evidence package to the Landlord by registered mail on August 14, 2021 and she stated that the package was delivered (the registered mail tracking history is noted on the first page of this Decision). As well, she provided a print-out of the Canada Post delivery status to confirm that this was delivered. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. The Tenant also submitted a video file to the Residential Tenancy Branch as evidence; however, she was uncertain if this was served to the

Landlord in her evidence package. As such, only the documentary evidence in this package will be accepted and considered in this Decision.

As a note, the Tenant testified that the Landlord claimed in a previous hearing not to have received evidence from the Tenant, and this was determined to be false. It is her suspicion that the Landlord will likely use this same tactic as a reason for not attending the hearing.

H.D. advised that additional evidence was served to the Landlord on January 27, 2021 by registered mail. However, as this evidence was served late and contrary to the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started in approximately September 2005 and that the tenancy ended when she gave up vacant possession of the rental unit on August 1, 2019 after being served with the Notice. Rent was established at \$1,335.00 per month and was due on the first day of each month. Her security deposit and pet damage deposit were both returned pursuant to the *Act*. A copy of the signed tenancy agreement was not submitted as documentary evidence.

She confirmed that the Notice was served to her on April 23, 2019. The reasons the Landlord checked off on the Notice were because “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)” and “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.” The Landlord indicated on the Notice that the effective end date of the tenancy was June 30, 2019. A copy of this Notice was submitted as documentary evidence.

H.D. referenced a previous Decision of the Residential Tenancy Branch dated June 17, 2019, involving these same parties, where the Tenant applied to cancel the Notice. It was determined in the Decision that the Landlord served the Notice in good faith. As such, an Order of Possession was granted to the Landlord effective for June 30, 2019. However, the Landlord extended the Order of Possession date and permitted the Tenant to reside in the rental unit until August 1, 2019. He submitted that in that hearing, the Landlord’s daughter testified that she would be moving in after the effective date of the Notice.

He advised that no one ever moved into the rental unit after the Tenant gave up vacant possession, as corroborated by two witness statements. There was no indication that the rental unit was ever inhabited until it was re-rented to a new tenant, who was not related to the landlord, in May 2020. He referenced the documentary evidence submitted, which included screenshots of new rental ads, to support the position that the Landlord did not use the property for the stated purpose.

The Tenant advised that according to her witnesses, no one moved into the rental unit until it was re-rented to a new tenant in May 2020. She testified that prior to her Application to dispute the Notice, she was served a Four Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit which she also disputed. This Decision, dated August 17, 2018, was submitted as documentary evidence and this particular notice was cancelled as the Arbitrator was not satisfied that the Landlord substantiated the validity of that notice. It is the Tenant’s belief that this supports a pattern of unscrupulous behaviour by the Landlord, and is consistent with her position that the Landlord failed to use the property for the stated purpose for at least six months after the effective date of the Notice. As such, she is seeking compensation in the amount equivalent to twelve months’ rent (**\$16,020.00**) pursuant to Section 51(2) of the *Act*.

B.U. testified that she moved into an adjacent property for work in July 2019, where she could see directly onto the rental unit. She confirmed that no one had moved in or inhabited the rental unit for at least four months from the time the Tenant gave up vacant possession. She noticed that the blinds were always askew and that the lights were never on. She noticed some activity and that the lights were on in the rental unit in February 2020, but she was unsure of what activity specifically was occurring. She stated that due to the pandemic, she was assigned from March 2020 onwards to work from home, so she cannot attest to what happened in the rental unit afterwards.

S.S. testified that she lived at an adjacent property, for four and a half years, that was situated such that she could easily see and talk to anyone that would go in and out of the rental unit. As she was a stay-at-home mother, she spent a considerable amount of time outside in front of her rental property. She advised that she did not observe anyone move into the rental unit after the Tenant gave up vacant possession. She stated that she saw some workers enter the rental unit in the winter of 2019, but they did not move in. They fixed the floors and installed a camera. Apart from this activity, the only person that she saw move in was a new tenant in May 2020. This was initially brought to her attention when she noticed an online ad for the rental unit. She submitted that she introduced herself to this new tenant, and this person was in no way related to the Landlord.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenant's claim for twelve-months' compensation owed to her as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served in April 2019 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

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.

(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.

With respect to this situation, I also find it important to note that Policy Guideline # 50 states that “A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.”

Finally, the Policy Guideline outlines the following about extenuating circumstances: “An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.

- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

When reviewing the totality of the evidence before me, at the time the Notice was served, it appears on the Notice as if the Landlord's intention was for the Landlord, or a close family member, to move into the rental unit. While this may have been the case, the good faith requirement ended once the Notice was accepted, and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months, beginning within a reasonable period of time after the effective date of the Notice.

The testimony from the Tenant is that the effective date of the Notice was June 30, 2019, but the Landlord extended the move-out date to August 1, 2019. However, there is no evidence before me to indicate that the Landlord, or a close family member of the Landlord, ever occupied the rental unit beginning within a reasonable period of time after the date the Tenant gave up possession of the rental unit, which was a month after the effective date of the Notice. In addition, there is no evidence before me that the Landlord, or a close family member of the Landlord, ever occupied the rental unit for at least six months after August 1, 2019.

Given the consistent and undisputed evidence of the Tenant, I am satisfied that the Landlord did not use the property for the stated purpose for at least six months after the date the Tenant gave up possession of the rental unit. Ultimately, I am satisfied that the Tenant is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$16,020.00**.

As the Tenant was successful in this claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

12 months' compensation	\$16,020.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$16,120.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$16,120.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: February 10, 2022

Residential Tenancy Branch