Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This adjourned hearing dealt with the tenant's application for dispute resolution (application) made on April 8, 2021, seeking remedy under the Residential Tenancy Act (Act) for:

- compensation from the landlord related to receiving a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued to the tenants; and
- to recover the cost of the filing fee.

The tenant, the tenant's agent/mother (agent) and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were informed prior to the hearing that they were not allowed to record the hearing.

Thereafter the parties were affirmed and were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

This dispute resolution hearing originally began on September 9, 2021, before another arbitrator. The original arbitrator made an Interim Decision on September 10, 2021, which dealt with evidence issues, finding that the tenant had not provided sufficient particulars or the breakdown of their monetary claim.

The original arbitrator adjourned the hearing in order to allow further documentary evidence to be submitted.

The hearing reconvened on January 18, 2022, before another arbitrator. That arbitrator declined to accept jurisdiction of the dispute resolution as they determined that the original arbitrator was seized of the matter. A further Interim Decision was made by the other arbitrator, on January 18, 2022. The hearing was adjourned and rescheduled for February 10, 2022.

Since that second hearing, the original arbitrator is now away on a long term basis, and is not able to continue with consideration of this dispute.

I informed the parties at the hearing that I would conduct this matter on a *de novo* basis, meaning that I would begin as if the previous hearings had not occurred and the dispute would begin from the beginning, or anew, as I did not have any previous evidence or notes from the testimony before me.

The parties, mainly the tenants, objected at that time and throughout the hearing, particularly because they had not been informed that the hearing would start anew. The tenants presented that the landlord's witness was present at the first hearing and provided testimony. The tenants asserted that testimony was very important, as the landlord's testimony changed from the first hearing until the second hearing.

Nonetheless, I determined that this matter would continue rather than dismiss the application with leave to reapply, for the reason that the tenant would be time-barred from making their application again.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?

Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

The tenant submitted the tenancy originally began on April 1, 2016 and ended on September 1, 2019, when she vacated the rental unit. The monthly rent at the end of the tenancy was $850 according to the tenant. The landlord asserted the monthly rent was $650, at the end of the tenancy.

The tenant said that they vacated the rental unit in response to the Two Month Notice issued to them by the landlord. This Notice was dated June 30, 2019, signed by the landlord, and listed an effective move-out date of August 31, 2019. Filed into evidence was a copy of the Notice.

The reason stated in the Notice was that the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of the person, intends in good faith to occupy the rental unit.

The rental unit was the upper floor of a home owned by the landlord, who resided in the lower unit during the tenant's tenancy.

There was no formal, written tenancy agreement as the parties were well acquainted and the payment of rent was a strict, money exchange. The evidence showed that the tenant's mother, the agent, provided veterinary services to the landlord, in exchange for monthly rent payments. When the veterinary services were not equal or greater than the amount of the monthly rent, the tenant or mother would pay the difference.

The evidence was that the monthly rent at the start of the tenancy was $600 or $650. Both parties provided some records of payments.

The tenant submitted that the landlord increased the monthly rent to $850, beginning in February 2019. To support this assertion, the tenant submitted a copy of an email exchange between the tenant's agent/mother and the landlord, with the agent's email to the landlord dated January 6, 2019, and the landlord's email response of January 8, 2019. The agent inquired of the landlord when the increase in monthly rent would take place.

In the January 8, 2019, email, the landlord wrote to the agent, the following: “As far as the amount for rent upstairs goes, as of February 1 it will be 850”.

In support of the Notice and in response to the tenant’s application, the landlord confirmed when asked if a family corporation issued the Notice to the tenant or if there was a family incorporation involved, that she made a mistake in marking that box. The landlord submitted that she was not a family corporation, but wanted to take over the entire home for her own purposes due to declining health. The landlord submitted that she has had a friend move into the rental unit, but the friend was not a tenant, did not pay rent, and was only living there to assist with her health care.

The tenant and agent submitted that the rental unit was rented the same time she moved out and has not left.

The agent asserted that there were no rent payments made to the landlord after the rent increased, as her veterinarian services exceeded $850 each month through the end of the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 51(2) provides that if 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 if 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 tenant is entitled to compensation equivalent of 12 months’ rent under the tenancy agreement.

The issue I must consider in this dispute is did the landlord use the premises for the stated purpose within a reasonable time, pursuant to section 51(2) of the Act, and if not did the landlords have extenuating circumstances, in my opinion, that prevented them from using the premise for the stated reason, pursuant to section 51(3) of the Act.

The Notice was given for the reason that the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of the person, intends in good faith to occupy the rental unit.

Tenancy Policy Guideline 50 states that the onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Additionally, in part, Guideline 50 reads,

> Accomplishing the Purpose/Using the Rental Unit Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months. …. The purpose that must be accomplished is the purpose on the notice to end tenancy…
>
> Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy.

In this case, I find the landlord listed the incorrect reason on the Notice, and therefore, would never be able to accomplish the stated purpose.

I cannot take into consideration that the landlord made a mistake, as I find the landlord is held accountable for the Notice served to the tenant, according to the Act and Policy Guideline.

For this reason, I find the landlord submitted insufficient evidence that the rental unit was used for the stated purpose for at least 6 months within a reasonable amount of time after the effective date.

I have not considered extenuating circumstances in this matter, as I find the landlord would never be able to use the rental unit for the stated purpose, as she was not a family corporation.

I therefore find the tenant is entitled to monetary compensation equivalent to 12 months' rent.

In determining the amount of the monthly rent, I considered that there was no written tenancy agreement, which is required of landlords under the Act. I find on a balance of probabilities that at the end of the tenancy, the monthly rent was $850, due to the landlord's written statement in the January 8, 2019 email to the tenant's mother, who had paid monthly rent during the tenancy by way of veterinarian services.

I find merit with the tenant's application and award them recovery of their filing fee of $100, pursuant to section 72(1) of the Act.

As a result, I grant the tenant a monetary award of $10,300, the equivalent of monthly rent of $850 for 12 months, or $10,200, and the cost of the filing fee of $100.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of $10,300.

Should the landlord fail to pay the tenant this amount without delay, the tenant must serve the order on the landlord for enforcement purposes. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent of $10,200 and recovery of the filing fee is granted. They have been granted a monetary order for $10,300.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 12, 2022

Residential Tenancy Branch