



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this Decision and Order.

The tenant testified that she served the landlord with this application for dispute resolution and evidence via registered mail on August 4, 2021. A Canada Post registered mail receipt stating same was entered into evidence. The landlord testified that she received the above documents on August 7, 2021. I find that the tenant's application for dispute resolution and evidence were served on the landlord in accordance with sections 88 and 89 of the *Act*.

The landlord testified that she emailed the tenant her evidence on August 24, 2021. The tenant testified that she received the landlord's evidence sometime in August 2021 but could not recall on what date. I find that the landlord's evidence was sufficiently served

on the tenant, for the purposes of this *Act*, pursuant to section 71 of the *Act*, because the tenant confirmed receipt.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. The tenant moved in on July 18, 2020 and moved out on June 6, 2021. Monthly rent in the amount of \$1,750.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is a suite in a house and the landlord resides in the main portion of the house.

The landlord testified that on April 30, 2021, she posted a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on the tenant's gate. The landlord entered into evidence a copy of the Two Month Notice dated April 30, 2021. The Two Month Notice dated April 30, 2021, states that the tenant must move out by July 31, 2021 because the rental unit will be occupied by the father or mother of the landlord or landlord's spouse.

The tenant testified that she received a Two Month Notice on May 12, 2021. The tenant entered into evidence a Two Month Notice dated May 12, 2021, which states that the tenant must move out by July 31, 2021 because the rental unit will be occupied by the father or mother of the landlord or landlord's spouse.

Both the April 30, 2021, and May 12, 2021 Two Month Notices appear to bear the landlord's signature, and both provide the same move out date and reason for ending the tenancy. The landlord testified that she only served the April 30, 2021, Two Month Notice and the tenant testified that she only received the May 12, 2021 Two Month Notice. The landlord did not enter into evidence a proof of service document pertaining to the April 30, 2021 Two Month Notice.

The tenant testified that she is seeking 12 months rent compensation because a little over one month after she moved out, she saw the subject rental property advertised for rent at an increased rental rate. The tenant entered into evidence the advertisement which states that the subject rental property is available for rent September 19, 2021, at a rental rate of \$2,000.00.

The landlord testified that she served the tenant with Two Months' Notice to End Tenancy for Landlord's Use of Property because she wanted to build a carriage home in her yard for her mother to reside in. The landlord testified that the city would not allow her to have a secondary suite in her home and a carriage home, so she had to decommission the suite and evict the tenant in order build the carriage home.

The landlord testified that she decommissioned the suite by removing a wall, connecting the suite electrical system to join that of the main house and removing the stove. No documentary evidence proving same was entered into evidence. The landlord testified that the suite now has full access to the main portion of the house. The landlord testified that the sale of her mother's house did not go through as expected and her mother suggested the landlord get some students to live in the decommissioned suite while the carriage house was being built and that is the add the tenant saw. The landlord did not provide any documentary evidence regarding the sale of her mother's house.

The landlord testified that she put up an advertisement for two students to live in the suite. The landlord testified that on July 28, 2021 she removed the advertisement because she did not like the quality of the applicants she received and remembered that she could not get new tenants after the tenant was evicted for landlord's use of property. The landlord testified that the suite has sat empty since the tenant moved out.

The advertisement entered into evidence by the tenant includes photographs of the subject rental property. The advertisement states "Furnished suite NO PARKING AVAIL". The advertisement contains 13 photographs, three of those photographs show a stove in the kitchen. The advertisement does not state that the suite is not a contained

suite or that only rooms are being rented. The landlord testified that she used old photographs for the advertisement.

The landlord testified that her mother has paid her rent in the about of \$1,750.00 per month since June 2021. The landlord entered into evidence proof of the above money transfers. The landlord testified that the carriage house is almost finished being built. The landlord testified that her mother currently lives in her own house and will sell it when the carriage house is ready and will move into the carriage house.

Analysis

Upon review of the two, Two Month Notices entered into evidence, both appear to bear the same landlord signature. As the tenant has a copy of the May 12, 2021, Two Month Notice, and not the April 30, 2021, Two Month Notice, I find, on a balance of probabilities, that the tenant was served with the May 12, 2021 Two Month Notice on or around May 12, 2021. I note that for the purposes of this application, it does not matter which of the Two Month Notices were served as they both contain the same move out date and the same reason to end the tenancy and both parties agree that a Two Month Notice was served. I find that the tenant was served in accordance with section 88 of the *Act*.

Section 51(2) and (3) of the *Act* state:

(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 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, 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 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 applicable, 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.

Residential Tenancy Policy Guideline #2A states:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

Based on the testimony of the landlord, I find that the landlord's mother has not moved into the subject rental property and is not intending to in the future. I note that the subject rental property is separate and distinct from the carriage house. The money transfers from the landlord's mother to the landlord do not alter the fact that the subject rental property was not used for the purpose stated on the Two Month Notice. Pursuant to section 51(2) of the *Act*, since the stated purpose for ending the tenancy, that being the landlord's mother moving into the subject rental suite, was not accomplished within a reasonable time, the tenant is entitled to 12 months' rent compensation unless the landlord can prove that extenuating circumstances prevented the landlord's mother from moving in, pursuant to section 51(3) of the *Act*.

Residential Tenancy Branch Policy Guideline #50 states:

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

The landlord testified that the sale of her mother's house did not go through as expected. No documentary evidence to substantiate this claim was entered into evidence. I find that the landlord has not proved that her mother's house was for sale, or that something unexpected prevented the sale from going through. I also find that the landlord has not proved that an alternate sale could not have been negotiated. I find that the failure of one offer to go through is not an extenuating circumstance. Pursuant to my above findings and section 51(3) of the *Act*, I award the tenant 12 months' rent in the amount of \$21,000.00.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover from the landlord the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$21,000.00.

The tenant is provided with this Order 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 03, 2022

Residential Tenancy Branch