



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was scheduled to deal with a tenant's application for monetary compensation payable where a landlord does not use the rental unit for the purpose stated on the Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") as provided under section 51(2) of the Act.

The tenants appeared at the hearing; however, there was no appearance on part of the landlord.

Since the landlord did not appear, I explored service of hearing materials upon the landlord.

The tenant testified that two proceeding packages were sent to the landlord via registered mail, on August 11, 2021: one to the rental unit address since the landlord had indicated he would be moving into the rental unit and the other package was sent to the landlord's service address that appears on the 2 Month Notice.

The tenant testified that the proceeding package sent to the rental unit address was returned as unclaimed but the package sent to the landlord's service address was not returned.

The tenant had uploaded an image of the registered mail package that was returned. I ordered the tenant to provide proof of service for the package that was sent to the landlord's service address on the 2 Month Notice and I imposed a deadline of February 9, 2021. I continued to hear from the tenants without the landlord present, on the conditional basis that my final decision would dependant on being satisfied of service.

On February 9, 2022, the tenants uploaded images showing the purchasing of two registered mail services on August 11, 2021 and the labels used to send the two registered mail packages. Upon review of this additional evidence, I accept that the tenants sent a proceeding package to the landlord's service address that appears on the 2 Month Notice, via registered mail on August 11, 2021 and in keeping with section 90 of the Act, I deem the landlord to be in receipt of the registered mail five days after mailing.

Issue(s) to be Decided

Have the tenants established an entitlement to compensation under section 51(2) of the Act, as claimed?

Background and Evidence

The parties executed a two year fixed term tenancy agreement or a tenancy set to commence on May 1, 2019 and expire on April 30, 2021. The monthly rent was set at \$2550.00 payable on the first day of every month.

On March 1, 2021 the landlord sent a letter to the tenants indicating the landlord would be ending the tenancy so that the landlord could move back into the rental unit. The tenants responded that the landlord would have to provide them with a proper notice to end tenancy. On March 12, 2021 the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property, in the approved form, with a stated effective date of May 31, 2021. The reason for ending the tenancy on the 2 Month Notice was as follows:

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 in good faith to occupy the rental unit.

As a result of receiving the 2 Month Notice the tenants withheld rent for May 2021 and vacated the rental unit on June 1, 2021.

The tenants testified that after the tenancy ended they observed the rental unit remained vacant and then they saw it listed for sale on July 10, 2021. The tenants went back to the property a few times, in July 2021 and August 2021, to check for mail and saw that the unit was still vacant. The tenants went by the property on Halloween for 'trick or treating' and observed the unit was still vacant. In December 2021 the tenants observed that there appeared to have been some yard work done and a "sold" sign on the for sale sign in the front yard but the house still appeared vacant.

The tenants seek compensation payable under section 51(2) of the Act.

Evidence provided for my review included a copy of the tenancy agreement; the landlord's letter of March 1, 2021; the 2 Month Notice dated March 12, 2021; and, an image of the real estate listing printed on July 10, 2021, showing the house was listed for sale as of June 30, 2021.

Analysis

Upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

The tenants have established that they had a tenancy at the rental unit and their monthly rent was \$2550.00. Upon expiry of the fixed term their tenancy would have continued on a month to month basis until such time it was brought to an end pursuant to one of the ways provided under section 44 of the Act [*How a tenancy ends*].

Where a landlord seeks to end a tenancy for landlord's use of property and serves the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") under section 49 of the Act, the tenant is entitled to compensation from the landlord, as provided under section 51 of the Act.

I have been provided unopposed evidence that the tenancy was ended by the landlord pursuant to a 2 Month Notice dated March 12, 2021 that the landlord had served upon the tenants. The tenants accepted that their tenancy would end for the reason indicated on the 2 Month Notice and they withheld rent for May 2021, which is in keeping with the

compensation requirements of section 51(1) of the Act, before vacating on June 1, 2021.

By way of this application, the tenants are seeking the additional compensation payable under section 51(2) of the Act.

Below, I have reproduced section 51(2) of the Act:

(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.

Subsection (3) provides a mechanism to excuse the landlord from having to pay the compensation provided under section 51(2) due to "extenuating circumstances". Below, I have produced subsection (3):

(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.

The Act provides very specific and limited circumstances when a landlord may end a tenancy. The Act also provides very serious consequences where a landlord ends a tenancy by stating one reason on a 2 Month Notice and then not fulfilling the stated reason. The consequences include having to pay the tenant additional compensation.

The requirement to pay the tenant additional compensation is intended to be a deterrent to ending a tenancy under false pretenses and in many cases, it provides an offset to the tenant often having to pay higher rent elsewhere. The spirit of the Act is to preserve existing tenancies except in limited and specific circumstances.

As provided in Residential Tenancy Policy Guideline 50: *Compensation for Ending a Tenancy*, the onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or that they used the rental unit for its stated purpose. 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.

The tenants have put forth unopposed evidence that after their tenancy ended, the rental unit remained vacant and was listed for sale and then sold to new owners. The landlord did not put forth any evidence to demonstrate the rental unit was occupied by the landlord or landlord's spouse for at least six months starting within a reasonable time after the tenancy ended. As such, I find I am satisfied that the landlord or landlord's spouse did not occupy the rental unit for at least six months starting within a reasonable amount of time after the tenancy ended and the tenants are entitled to additional compensation payable under section 51(2).

I was not presented any evidence that would suggest an "extenuating circumstance" prevented the landlord from fulfilling the stated purpose on the 2 Month Notice and I do not excuse the landlord from paying the additional compensation.

In light of the above, I grant the tenants' request for compensation payable under section 51(2) of the Act, which equals \$30600.00 [12 x \$2550.00]. I further award the tenants recovery of the \$100.00 filing fee they paid for this Application for Dispute Resolution. Therefore, I provide the tenants a Monetary Order in the sum of \$30700.00 to serve and enforce upon the landlord.

Conclusion

The tenants were successful in this application and are provided a Monetary Order in the sum of \$30700.00 to serve and enforce upon the landlord.

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