



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Eventide Properties (Fairview)
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNECT, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution (application) made on July 25, 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 tenant; and
- to recover the cost of the filing fee.

The tenant and the landlord/co-owner 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.

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 that the tenancy originally began on December 1, 2012 and ended on December 21, 2020, when he vacated the rental unit. The monthly rent at the end of the tenancy was \$1,651.28 according to the tenant and the notice of rent increase supplied by the landlord.

The original landlord as shown by the written tenancy agreement was an individual. The current landlord is a limited company, who purchased the property approximately 4 years ago. The landlord confirmed that the corporation was not a family corporation, as he and a partner own the company equally.

The tenant said that he vacated the rental unit in response to the Two Month Notice issued to them by the limited company landlord. This Notice was dated November 27, 2020, signed by the landlord/co-owner, and listed an effective move-out date of January 31, 2021. Filed into evidence was a copy of the Notice.

The reason stated in the Notice was that the rental unit will be occupied by the landlord or close family member.

The landlord is listed on the Notice as a limited company.

The tenant submitted he is seeking 12 months rent compensation as the landlord did not occupy the rental unit at all and rented the suite to new tenants after renovating it.

In support of the Notice and in response to the tenant's application, the landlord/co-owner said that when their company bought the property, it was with the intention that he, the co-owner, would eventually live in the residential property, which was a multiple unit apartment building.

The landlord said that he issued the Notice to the tenant due to his intention to move into that unit; however, his personal circumstances changed. The landlord submitted that he had legal guardianship of his aunt, whose day program facility closed due to Covid. Along with this closure, the aunt's caregiver could no longer look after the aunt, which resulted in the landlord moving in with the aunt full-time, which continues presently.

The landlord confirmed that he never moved into the rental unit and eventually the rental unit was re-rented to another tenant, for a tenancy start date of July 15, 2021, and monthly rent of \$2,200.

Analysis

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

Section 49 (3) and (4) of the Act deals with notices to end a tenancy, as follows:

(3) **A landlord who is an individual** may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

[My emphasis]

Tenancy Policy Guideline 2.A states that a landlord means an individual or family corporation who at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest.

A family corporation is defined as a corporation in which all the voting shares are owned by one individual or one individual plus one or more of that individual's brother, sister, or close family member.

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.

In the case at hand, the Notice was given for the reason that the landlord or the landlord's spouse will occupy the rental unit. The landlord is a limited company and is therefore not an individual.

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.

In this case, I find the landlord listed the incorrect reason on the Notice as the landlord is not an individual, and therefore, would never be able to accomplish the stated purpose.

I cannot take into consideration that the landlord made an error in listing the reason on the Notice, as I find the landlord is held accountable for the Notice served to the tenant which led to the tenant vacating the rental unit, 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, in this case, January 31, 2021. The landlord/co-owner confirmed, and the landlord's documentary evidence shows, that the rental unit remained unoccupied and the rental unit was re-rented at a higher rate five and half months after the effective date.

I have not considered extenuating circumstances in this matter, as I find the landlord/co-owner would never be able to use the rental unit for the stated purpose.

I therefore find the tenant is entitled to monetary compensation equivalent to 12 months' rent, due to the landlords' breach of the Act.

As a result, I find the tenant has established a monetary claim of \$19,815.36, the equivalent of monthly rent payments of \$1,651.28 for 12 months.

I further grant the tenant recovery of their filing fee of \$100.

Conclusion

The tenants' application has been granted in full and they are provided a monetary order in the amount of **\$19,915.36**, which is the equivalent of 12 months rent of \$1,651.28, or \$19,815.36, and the filing fee of \$100.

Should the landlord fail to pay the tenant this amount without delay, the tenant must serve the landlord the order to be enforceable. The landlord is **cautioned** that costs of such enforcement are recoverable from 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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 2, 2022

Residential Tenancy Branch