



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on August 25, 2021 (the "Application"). The Tenants applied as follows:

- For compensation from the Landlords related to a Notice to End Tenancy for Landlord's Use of Property
- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

This matter was originally heard before a different Arbitrator on November 30, 2021. The original Arbitrator issued an Interim Decision on November 30, 2021. The Interim Decision states in part:

During the hearing the Tenants stated that they did not receive the Landlords' response evidence in time to provide any reply to that material in accordance with the Rules. The Landlord, T.T., testified that their materials were mailed to the Tenants on November 16, 2021...

Pursuant to section 64 of the Act, I Order as follows:

1. The Tenants must submit to the Residential Tenancy Branch online service portal, and serve their reply materials on the Landlords by no later than December 14, 2021.
2. Neither party may submit any further evidence in respect of this adjourned proceeding.

The original Arbitrator was not available to hear the reconvened hearing and this matter came before me for a hearing March 18, 2022 at 9:30 a.m. RTB notes show the Interim Decision and new Notice of Hearing for the March 18th hearing were emailed to the parties December 01, 2021.

The Tenants appeared at the March 18th hearing. Nobody appeared at the March 18th hearing for the Landlords. The hearing proceeded for 30 minutes and the Landlords did not call into the hearing during this time.

I explained the hearing process to the Tenants who did not have questions when asked. I told the Tenants they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Tenants provided affirmed testimony.

I confirmed with the Tenants that they understood I would hear the matter because the original Arbitrator is unavailable. I told the Tenants I would re-hear the substantive matter, meaning the request for compensation from the Landlords related to a Notice to End Tenancy for Landlord's Use of Property, compensation for monetary loss or other money owed and reimbursement for the filing fee. I told the Tenants I do not have a record of what was said by the parties at the first hearing, other than what is noted in the Interim Decision.

Given the Interim Decision, I found the only outstanding service issue to be in relation to the Tenants' reply materials which were to be submitted and served on the Landlords by December 14, 2021. The Tenants confirmed that the only outstanding service issue related to their reply materials. The Tenants testified that they sent their reply materials to the Landlords by registered mail on December 07, 2021 and that they submitted a Proof of Service in relation to this. The Tenants submitted proof of service with registered mail receipts for packages sent December 11, 2021.

Based on the undisputed testimony of the Tenants and registered mail receipts, I accept that the Landlords were served with the Tenants' reply materials in accordance with section 88(c) of the *Residential Tenancy Act* (the "Act") on December 11, 2021. Pursuant to section 90(a) of the *Act*, the Landlords are deemed to have received the package December 16, 2021. I am satisfied the Tenants complied with the Interim Decision by sending their materials to the Landlords prior to December 14, 2021.

I proceeded with the hearing in the absence of the Landlords given the Landlords were sent the hearing package for the March 18th hearing by the RTB on December 01, 2021

and therefore the Landlords knew of the hearing date and time. The Tenants were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Tenants. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation from the Landlords related to a Notice to End Tenancy for Landlord's Use of Property?
2. Are the Tenants entitled to compensation for monetary loss or other money owed?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought:

- \$21,600.00 in compensation pursuant to section 51 of the *Act* based on the Landlords failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 27, 2021 (the "Notice")
- \$2,914.23, the basis of which is stated in the Application as follows:

Due to a shortage of affordable and available rentals in the...area we had to settle for renting a much smaller home. The home and property are not large enough to accommodate all of our household belongings, so we had to rent additional storage at a cost of \$225.00 a month. We feel entitled to ask to be compensated for twelve months of storage fees. We also feel we should be compensated for our moving costs of \$114.23 and the \$100.00 application fee to register this dispute

The Tenants testified as follows. The Tenants had a written tenancy agreement with the previous owners of the rental unit. The tenancy started February 01, 2020 and was for a fixed term of one year. Rent was \$1,450.00 per month due on the first day of each month. The Landlords purchased the rental unit and took possession of it February 26, 2021. No new tenancy agreement was completed between the Tenants and Landlords.

The Tenants further testified as follows. The Tenants were served with the Notice which originally had an effective date of April 30, 2021. The effective date was changed to May 31, 2021. The Tenants provided notice ending the tenancy early and moved out May 10, 2021.

The Notice was submitted. The grounds for the Notice are:

The rental unit will be occupied by the landlord or the landlord's close family member...

The landlord or the landlord's spouse

The Tenants further testified as follows. The Landlords never moved into the rental unit at any point. The rental unit was the upper suite of a house. The Landlords did not move into either the upper or lower suite of the house. On May 24, 2021, the Tenants found what seemed to be the rental unit listed for rent on a rental website. The Tenants looked into the listing further and confirmed it was for the rental unit. On June 21, 2021, the Tenants attended the rental unit. Tenant P.R. knocked on the door of the rental unit and spoke to the occupant who confirmed they were renting the unit from the Landlords and that the downstairs unit was also rented out.

The Tenants further testified as follows. The Landlords submitted evidence showing a reduction in their income to prove extenuating circumstances; however, the Landlords work for several different companies and have rental income. Further, the Landlords purchased another house August 31, 2021 for over one million dollars. The reduction in income is not an extenuating circumstance given the Landlords' financial situation.

The Tenants submitted the following relevant documentary evidence:

- The Notice along with a letter from the Landlords about the Notice
- A letter from the Landlords about extending the effective date of the Notice
- A rental website listing dated May 22, 2021
- Emails about the rental listing showing it relates to the rental unit
- Reply materials refuting the Landlords' position about extenuating circumstances

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(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.

Section 51 of the *Act* states:

(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.

(emphasis added)

When tenants apply for compensation pursuant to section 51(2) of the *Act*, it is the landlord who has the onus to prove they followed through with the stated purpose of the notice to end tenancy within a reasonable period after the effective date of the notice and used the rental unit for the stated purpose for at least six months. It is also the landlord who has the onus to prove extenuating circumstances.

Here, it is the Landlords who have the onus to prove they, or their spouse, occupied the rental unit within a reasonable period after May 31, 2021 and did so for at least six months. If the Landlords or their spouse did not occupy the rental unit within a reasonable period after May 31, 2021 or did not do so for at least six months, the Landlords have the onus to prove extenuating circumstances prevented them from doing so.

Rules 7.3 and 7.4 of the Rules state:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As stated, I proceeded with the hearing in the absence of the Landlords because I was satisfied the Landlords were aware of the hearing date and time. I acknowledge that the Landlords submitted documentary evidence for the hearing; however, the Landlords did not submit written submissions and did not appear at the hearing to present or explain their evidence. In the circumstances, I am not aware of the Landlords' position on this hearing. Given this, the Landlords have failed to prove they, or their spouse, occupied the rental unit within a reasonable period after May 31, 2021 and did so for at least six months. Further, the Landlords have failed to prove extenuating circumstances.

As well, I accept the undisputed testimony of the Tenants that the Landlords never moved into the rental unit at any point and I find the Tenants' testimony about what occurred with the rental unit after they moved out is supported by the rental website listing dated May 22, 2021 and emails showing the listing relates to the rental unit.

I do not find it necessary to comment on the Tenants' testimony and documentary evidence refuting that extenuating circumstances prevented the Landlords from following through with the stated purpose of the Notice because it is not the Tenants' onus to prove this and the Landlords did not appear at the hearing to present their evidence or claim that extenuating circumstances did prevent them from following through with the stated purpose of the Notice.

Given the above, I am satisfied section 51(2) of the *Act* applies and the Landlords must pay the Tenants 12 times the monthly rent payable under the tenancy agreement being \$17,400.00 (\$1,450.00 x 12).

In relation to the request for \$2,914.23, I find this is based on the same allegations that underlie the section 51 compensation. I find the *Act* sets out what tenants are entitled to when landlords fail to follow through with the stated purpose of a section 49 notice to end tenancy and that is the equivalent of 12 times the monthly rent as set out in section 51(2) of the *Act*. I find the Tenants are not entitled to more than the equivalent of 12 times the monthly rent in the circumstances.

Given the Tenants were partially successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$17,500.00 and are issued a Monetary Order in this amount.

Conclusion

The Application is granted in part. The Tenants are entitled to \$17,500.00 and are issued a Monetary Order in this amount. This Order must be served on the Landlords and, if the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: March 21, 2022

Residential Tenancy Branch