



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order in the amount of \$8,500.00, for 12 times the monthly rent due to the purchaser failing to use the property for the stated use in the 2 Month Notice to End Tenancy for Landlord's Use of Property dated May 20, 2021 (2 Month Notice) and to recover the cost of the filing fee.

The tenant and the purchaser attended the teleconference hearing, all participants were affirmed, the hearing process was explained, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The landlord confirmed that they received the tenant's documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The landlord confirmed that they did not serve the tenant with their documentary evidence. Pursuant to RTB Rule 3.15, the landlords' documentary evidence was excluded in full as it was not served on the tenants as required and at a minimum of 7 days prior to the hearing.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues 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?
- If yes, is the tenant also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 1, 2018 and reverted to a month-to-month tenancy after September 30, 2019. Monthly rent was \$700.00 per month and was due on the first day of each month.

There is no dispute that the tenant accepted the 2 Month Notice to End Tenancy for Landlord's Use of Property dated May 20, 201 (2 Month Notice). The reason stated on the 2 Month Notice is:



..... All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The purchaser testified that they moved into the rental unit in October 2021. The purchaser claims their identification was changed to the rental unit address, however the identification was not served on the other party so as with all landlord documentary evidence, I have not considered it as it was not served on the tenant.

The purchaser admits to posting the rental unit online for rent to “prove to my brother a mortgage was less expensive then rent”. The purchaser denies ever having moved out of the rental unit and stated that a friend also lives with them but does not pay rent. The purchaser testified that they were shocked to see how much rent was and that they received a lot of interest in the rental ad. The purchaser stated that they were happy to pay less for a mortgage then rent per month.

The tenant responded by stating that they moved out at the end of July 2021 and that on August 23, 2021 the rent ad on Facebook went up indicating that the apartment was available September 1, 2021 for \$1,300.00 per month. The address on the Facebook ad did not match the rental unit; however, the purchaser admitted that they placed the ad and that it was the rental unit. The tenant also provided a copy of a text, which supports the ad matched the rental unit address even though the address was different. When the purchaser was contacted about the rental ad, via what the tenant stated was a friend who contacted the purchaser, the response was “Sorry, found a tenant.” The purchaser admitted that they did not submit any statements from their brother to support their testimony. Their brother was also not called as a witness by the purchaser.

The tenant claims their former landlord said the purchaser was having their daughter move into the rental unit. The purchaser stated that they don’t know how the former landlord could have said that when the purchaser does not have children and has no idea where the former landlord would have come up with that.

The purchaser testified that after a couple days, they deleted their post after testing the market to see if there would be interest at \$1,300.00 per month. The tenant submitted a screenshot which showed “Rented” on the ad posted by the purchaser that the parties agreed was the rental unit address. The ad reads “Listed over a week ago”. The rental ad was so detailed it included that laundry was in the unit, parking available, had a balcony, was unfurnished, and was for a 1-year lease in addition to the number of bedrooms and bathrooms.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, pursuant to section 51(2) of the Act, I find there is a reverse onus of proof on the purchaser/landlord to provide sufficient evidence that they complied with the reason stated in the 2 Month Notice. Section 51(2) of the Act applies and 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.

[emphasis added]

Secondly, I find the purchaser was not credible for the following reason. The purchaser testified that they removed the new rental ad after a couple days, which is contradictory to the rental ad which clearly indicates that it was "listed over a week ago." I also find that by listing the rental ad with a different address, that the purchaser was attempting to disguise the rental unit in the ad. In addition, I find it would have been reasonable to delete the ad if they intended it for research purposes, but instead they reply to an interested party as "Sorry, found a tenant" and marked the rental ad as "rented" versus deleting it as claimed. As a result, I prefer the testimony of the tenant, which was consistent and was supported by documentary evidence that supports the purchaser had listed the rental unit for rent and intended to rent it out.

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

51(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.**

[emphasis added]

In addition to the above, section 51(3) of the Act states:

(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]

RTB Policy Guideline 50 – Compensation for Ending a Tenancy states the following regarding extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

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. [emphasis added]

I find RTB Policy Guideline 50 takes a reasonable approach and based on the evidence before me, I find the reason stated by the purchaser “to prove to their brother that a mortgage was less than monthly rent” was not likely the reason for posting such a detailed rental ad, including a 1-year lease, parking available, unfurnished, balcony and laundry, etc. I have reached this finding as I find the testimony of the purchaser was contradictory and not logical. In fact, I find the landlord failed to take the logical approach which would have been to show their brother what other similar sized units were being rented for in the neighbourhood. Instead the purchaser actually listed their unit for rent, using a different address and left that ad up, without deleting it, for over 1 week and then claim to have deleted it after a couple days, which I find was not true.

I find the reasons provided by the purchaser do not meet the definition of extenuating circumstances that prevented the landlord from complying with the stated purpose within a reasonable period after the effective date of the 2 Month Notice and using the rental unit for that stated purpose for at least 6 months’ duration. Rather, I find the purchaser/landlord either re-rented or attempted to re-rent the rental unit contrary to the reason stated on the 2 Month Notice.

Based on the above, I find the actions of the purchaser/landlord did not comply with the reasons stated in the 2 Month Notice, were not reasonable, and that the purchaser/landlord has failed to satisfy me that extenuating circumstances existed that prevented them from complying with the stated purpose within a reasonable period after the effective date of the 2 Month Notice and using the rental unit for that stated purpose for at least 6 months’ duration. Therefore, I find the tenant is entitled to **\$8,400.00** in

compensation from the landlord, comprised of 12 times the monthly rent of \$700.00 pursuant to section 51(2) of the Act.

As the tenant's application was fully successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find the tenant has established a total monetary claim of **\$8,500.00** comprised of \$8,400.00, which is 12 times the \$700.00 monthly rent, plus the \$100.00 filing fee.

Conclusion

The tenant's application is fully successful. I find the landlords failed to use the rental unit for the stated purpose and instead, listed the rental unit for rent at \$1,300.00 per month and as a result, the tenant is granted 12 times the monthly rent as described above.

The tenant is granted a monetary order pursuant to section 67 of the Act, in the amount of \$8,500.00 as indicated above. This order must be served on the landlord/purchaser and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlord/purchaser. Should the landlord/purchaser fail to pay the monetary order once served upon them, they could be held liable for all costs related to enforcement of the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 16, 2022

Residential Tenancy Branch