



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on April 25, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

The Landlord was present at the hearing with legal counsel, her son, R.N., and a witness, H.B. The Tenant attended the hearing with his son, C.M., and advocate, T.K.

Service

At the previous hearing, on February 7, 2022, there were multiple issues with service of the documents and evidence, and as such, the parties were ordered to do the following:

1. *Any evidence submitted to the RTB and served prior to the first hearing is not admissible, and both parties must resubmit their evidence to the RTB, and re-serve their evidence to the other party prior to the next hearing.*
2. *Both parties must comply with the service timelines under the Act and the Rules for their evidence packages, and be prepared to demonstrate service at the next hearing.*

The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding and evidence package, following the last hearing, and leading up to this hearing. I find the Tenant sufficiently served his application and evidence for the purposes of this hearing.

The Landlord served the Tenant with 2 packages, following the February 7, 2022, hearing. The Tenant acknowledged getting the first package, which contained several bank statements, ("supplemental evidence.") No issue was raised with service of this package, as it was within the acceptable time frames under the Rules. However, the Landlord served their second package to the Tenant on April 21, 2022, which was only 4 days before the hearing. The Tenant took issue with the late service, contrary to the orders made.

This second package contained the bulk of the Landlord's evidence, and was the same package that was already uploaded and served before the February 7, 2022, hearing. However, I note there were service issues identified at the February 7, 2022, hearing, and I made it very clear to the parties that any evidence submitted to the RTB and served prior to the first hearing is not admissible, and both parties must resubmit their evidence to the RTB, and re-serve their evidence to the other party prior to the next hearing. The parties were also clearly told to comply with the timelines under the Rules.

Rule 3.15 states that the applicant must receive the respondent's evidence no later than 7 days before the hearing. This was clearly not done, and there is no reasonable explanation as to why my clear and specific orders were not followed. The Landlord did not state that any of this was new and relevant evidence. I find the Landlord's second evidence package, served April 21, 2022, is not admissible and will not be considered further. Only the Landlord's first package will be considered.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

Both parties agree that monthly rent was \$1,150.00 per month. The Tenant stated he received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) in early December 2020, and moved out on or around April 1, 2021. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- 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).
 - The child of the Landlord or Landlord's spouse

The Tenant stated that he lived in this rental unit for many years, and knew the previous owners, before this Landlord bought the house. The Tenant explained that they rented the whole house, which is directly beside the Landlord's house, on the same property. The rental house consists of 2 bedrooms on the main floor, and 2 bedrooms on the lower floor, with a bathroom on each floor, and one kitchen. The Tenant stated that things were going well in terms of the tenancy for quite some time, until the Tenant started to receive rent increases from the Landlord. The Tenant stated that he does not believe that the Landlord's son, R.N., ever moved in and believes that only H.B. moved into the property and that he subsequently tried to get roommate to help pay his rent.

The Tenant stated that he saw a Facebook ad posted online for this rental unit. A copy of this as was provided into evidence, and it states that a 2 bedroom 1 bathroom rental is available , as of June 22, 2021. The ad also stated that the person who posted the ad would be sharing the house with the prospective Tenant(s), and that he was looking for a "roommate to rent the entire main floor", and "you would have your own 2 bedrooms, 1 bathroom, and giant living room". Further the ad specified that the rooms can be left "furnished" and that the table and chairs will be "left upstairs." The ad also specifies that the person who posted the ad has a bedroom in the basement. The ad further noted that the poster was looking for someone to "fill the upstairs", and that occupancy was available for July or August 2021.

The Landlord stated that her son, R.N., moved into the property on April 1, 2021, and that he moved into the basement. The Landlord stated that on May 1, 2021, R.N.'s friend, H.B., moved into the main floor of the rental unit, and lived in the house with R.N. and still does to this day. The Landlord stated that both R.N. and H.B. still live in the house together and no one else lives in there. Both R.N. and H.B. testified that H.B. still lives upstairs, and R.N. lives in the basement bedroom.

H.B. acknowledged that he was the one who posted the ad on Facebook, as he was trying to “test” the market to see what he could get in terms of revenue, as he knew the rental market was tight. H.B. stated that he decided not to rent any of the rooms out in the house, and that it is only himself and R.N. who live there.

Analysis

With respect to the Tenant’s request to obtain 12 months’ worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD’S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

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.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlords to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. The Landlord selected the following ground:

- 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).
 - The child of the Landlord or Landlord's spouse

I turn to the following portion of the Act:

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.

(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.

In this case, I note the onus is on the Landlord to prove that they accomplished the stated purpose on the Notice, which is that her son would be moving into the property. I note the Landlord provided a few bank statements for both the Landlord, and her son, to

show that each month, an amount was transferred from the son's account to the Landlord's account, mid month. The amounts appear to vary significantly and range from \$500.00 to \$523.72 to \$723.72 to \$1,000.00 to \$1,081.54. I note these bank statements were provided. However, the Landlord did not speak to and explain why all the amounts were different, and whether this was for R.N.'s rent at the house, or if it was for utility bills, or whether it was for some other unrelated transaction.

I have reviewed the testimony and evidence on this matter, and I find there is a lack of evidence showing that R.N. moved into the property, and did so for at least 6 months, after the effective date of the Notice. There are no utility bills, or photos, showing that R.N. lives in the house, only brief testimony in the hearing, and a few sparse bank statements. I also note there is an ad posted on Facebook around June 22, 2021, and I find it odd that H.B. would post this ad, and manage it himself, if he was supposed to be the roommate of R.N. who was living downstairs. If R.N. was in fact living in the house, it seems odd that he wouldn't be the one posting the ad, given it was his mother's house, and he was allegedly also living in the downstairs. Further, it also seems odd that H.B. would state in the ad that his bedroom is in the downstairs and that any prospective Tenant/roommate would only be sharing the utilities with one other person, which could imply that it was only H.B. living in the house alongside any prospective renters acquired through Facebook.

I also note H.B. went to the effort to explain that he was living in the house, including an explanation about his cat, who would also be inside the house. It seems odd that he would go to the extent to mention a cat who would be sharing the living space, but that he would fail to mention that there was another person living in the house as well (the Landlord's son, R.N.). I note the Tenant believes and asserts that the Landlord's son, R.N., never moved in, and that it was only ever H.B, which is a breach of the Act, and the reason behind the Notice. Given the above noted points, with respect to the information in the ad that H.B posted, and the lack of evidence (such as utility bills or other documentary evidence) supporting that R.N. moved in, and was actively residing in the unit I find the Landlord has failed to sufficiently demonstrate that her son moved in for a period of at least 6 months, following the effective date of the Notice.

As a result, I find the Landlord breached section 51 of the Act, which typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that she should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

The Landlord did not speak to any extenuating circumstances. I am not satisfied that there were any “extenuating circumstance”, such that it would be unreasonable or unjust for the Landlord to pay the compensation.

I award the Tenant \$13,800.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$1,150.00.

Conclusion

I grant the Tenants a monetary order in the amount of \$13,800.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: April 26, 2022