



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 convened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- compensation from the Landlord related to the failure of the Landlord to use the rental unit for the purpose stated in a Notice to End Tenancy for Landlord's Use of Property dated June 29, 2021 (the "2 Month Notice") pursuant to section 51.4 and 67; and
- authorization to recover the filing fee of their application from the Landlord pursuant to section 72.

The Tenant, the Landlord and the Landlord's advocate ("EK") attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. A witness ("KK") attended the hearing when required to provide testimony on behalf of the Landlord.

The Tenant stated she served the Notice of Dispute Resolution Proceeding and some of her evidence ("NDRP Package") on the Landlord in-person on September 22, 2021. EK acknowledged the Landlord received the NDRP Package. I find the NDRP Package was served on the Landlord in accordance with the requirements of sections 88 and 89 of the Act.

The Tenant stated she served additional evidence on the Landlord by email on March 2, 2022. EK acknowledged the Landlord received the Tenant's additional evidence by email.

I find the Tenant's additional evidence was served on the Landlord in accordance with the requirements of section 88 of the Act.

EK stated the Landlord served evidence on the Tenant by registered mail on February 17, 2021. EK submitted the Canada Post tracking number to corroborate her testimony on service of the Landlord's evidence. I find the Landlord's evidence was served on the Tenant accordance with the requirements of section 88 of the Act.

Issues to be Decided

Is the Tenant entitled to:

- compensation from the Landlord in relation to failing to use the rental unit for the purpose stated in the 2 Month Notice?
- recover the filing fee of the Application?

Background and Evidence

The rental unit, named "Freesia", is one of four temporary rental accommodations located in a house in which the Landlord resides. The parties agreed the tenancy commenced on May 1, 2020, for a fixed term ending November 1, 2020, and then continued on month-to-month basis. The parties agreed the Tenant paid rent of \$1,200.00 on the 1st day of each month during the tenancy.

The Landlord served the 2 Month Notice on the Tenant which required her to vacate the rental unit on August 31, 2020. The 2 Month Notice stated the reason for ending the tenancy was the rental unit would be occupied by the Landlord or the Landlord's spouse. The effective date of the 2 Month Notice was August 31, 2021 and the parties agreed the Tenant vacated the rental unit on that date.

EK stated the Landlord and his wife operated four rooms in the Landlord's home as Airbnb accommodations since 2020. EK stated the Landlord has problems with his hip joints and the Landlord did not move into the rental unit after the Tenant vacated it. EK stated the Landlord thought that, since he could not use the rental unit, another close member of the family could use it. EK stated the rental unit was renovated before the Tenant moved into it and it did not require any renovations after the Tenant moved out. KK testified he commenced using the rental unit in December 2021 and he is still living there.

The Tenant stated she had received a number of complaints from the Landlord's wife regarding cooking odours and noise while the Tenant and her son were living in the rental unit. The Tenant stated she moved out of the rental unit on August 31, 2021 as a result of the 2 Month Notice. The Tenant stated that, as a single mother, the move caused her considerable stress and she is now paying \$2,300.00 for alternative accommodations. The Tenant stated she saw an advertisement on Airbnb for the same rental unit. The Tenant stated she tested making a reservation for September 10 to September 20, 2021 and Airbnb indicated the rental unit was available for that time period.

EK stated the Landlord uses the same picture of the rental unit when advertising any of the temporary rentals advertised on Airbnb. EK denied that the rental unit was not being offered for temporary accommodations at the time the Tenant tried reserving a room on Airbnb in September 2021.

Analysis

The Tenant seeks \$14,400.00 in compensation pursuant to section 51(2) of the Act based on her assertion the Landlord failed to use the rental unit for the stated purpose in the 2 Month Notice. The 2 Month Notice stated the purpose for ending the tenancy was that the rental unit would be used by the Landlord or the Landlord's spouse. The 2 Month 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 sets out compensation due to tenants served with a notice to end tenancy issued under sections 49(2) and 49(3) of the Act and states in part:

- 51(2) Subject to subsection (3), the landlord...must pay the tenant...an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement *if the landlord...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...from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord...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 in italics added]

Pursuant to Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures*, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the standard of proof.

Residential Tenancy Policy Guideline 50 ("PG 50") addresses the requirements for a landlord to pay compensation to a tenancy under the Act in certain circumstances, including when a landlord has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given. PG 50 states, in part:

C. 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).

[...]

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.

Reasonable Period

[...]

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. *It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances.* For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Accomplishing the Purpose/Using the Rental Unit

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months

[emphasis in italics added]

The effective date of the 2 Month Notice was August 31, 2021. As noted above, the Tenant vacated the rental unit on August 31, 2021 on the basis of service of the 2 Month Notice on her by the Landlord.

EK admitted that, neither the Landlord nor the Landlord's spouse have used the rental unit since the Tenant vacated it. EK stated the Landlord's hips prevented his use of the rental unit. The Landlord did not submit any evidence or call a physician as a witness to provide testimony, to corroborate the Landlord's medical condition and when that condition started. As such, the Landlord has not provided any compelling evidence demonstrating he should be excused, based on extenuating circumstances, from paying compensation to the Tenant for failure to accomplish, within a reasonable period of time, the stated purpose for ending the tenancy set out in the 2 Month Notice.

EK then testified the Landlord thought a close family member of the Landlord could use the rental unit instead of himself. However, the Landlord did not submit any evidence, and EK did not provide any testimony, that the Tenant knew, or should have known, that a child of the Landlord would be occupying the rental unit. As such, section 68(1(a) of the Act does not allow me to amend the 2 Month Notice to state the rental unit would be used by a child of the Landlord.

Furthermore, even if I were permitted to amend the 2 Month Notice to state that a child of the Landlord or Landlord's spouse, would be using the rental unit, it does not advance the Landlord's case. EK and KK both testified that KK did not start using the rental unit until December 2021, being three months after the Tenant vacated the rental unit. As stated in PG 50, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. As no renovations were performed on the rental unit after the Tenant vacated, a reasonable period of time for KK to have moved into the rental unit would have been September 15, 2021. However, as noted above, KK

did not move into the rental until three months after the Tenants vacated. I do not consider a three-month delay to be a reasonable time period after the Tenant vacated the rental unit.

In the circumstances, I am not satisfied, based on the evidence, the Landlord has met his onus to prove he or the Landlord's spouse used the rental unit for the stated purpose within a reasonable period after September 1, 2021 and continuing for a minimum period of 6 months. To be clear, I am also not satisfied that, even if the 2 Month Notice was amended to state that a child of the Landlord or Landlord's spouse would be using the rental unit, KK did not commence using the rental unit within a reasonable period of time of the Tenant vacating the rental unit.

Given the above, I find the Landlord must pay the Tenant \$14,400.00, being the equivalent of 12 times the monthly rent of \$1,200.00.

Given the Tenant was successful in the Application, I find that she is entitled to reimbursement of her filing fee of \$100.00 for the Application pursuant to section 72(1) of the Act.

In total, the Tenant is entitled to \$14,500.00 and I issue the Tenant a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenant is entitled to \$14,500 and I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed by the Tenant 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 *Residential Tenancy Act*.

Dated: April 23, 2022

Residential Tenancy Branch