



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for a monetary order that is the equivalent to 12 months rent and an additional one month's rent, pursuant to section 51 of the Act.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11.

The parties confirmed receiving the other's evidence.

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 and written evidence before me that met the requirements of the 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 pursuant to section 51 of the Act and to recover the cost of the filing fee?

Background and Evidence

The tenancy began on January 1, 2020, and ended on or about May 16, 2021. The monthly rent was \$1,400. The tenant said that the landlord here was not the original landlord, as the property changed ownership during the tenancy.

The tenants' monetary claim is \$16,800, equivalent of 12 times the monthly rent payable under the tenancy agreement, at the end of the tenancy, for receiving the landlord's 2 Month Notice, as it has not been used for the stated purpose listed on the Notice. The tenant additionally claims \$1,400 as the landlord failed to pay him the one month's compensation for having received the 2 Month Notice.

In support of this claim, the tenant testified that they received the Notice from the landlord on June 13, 2021, listing an end of tenancy date of August 31, 2021. The tenant filed a copy of the Notice, which was dated June 13, 2021, and signed by their landlord. As a reason for ending the tenancy, the landlord listed that the child of the landlord or the landlord's spouse will occupy the rental unit.

The tenant submitted that after vacating, the rental unit was posted for rent for \$1,550, showing a screen shot of the listing. The tenant submitted he was not sure when the listing was posted, but the screenshot was taken on August 26, 2021.

The landlord agreed her daughter did not move into the rental unit and that the rental unit was advertised in August 2021, and currently is being rented to another tenant who pays \$1,550.

The landlord agreed she did not pay the tenant a month's monetary compensation for having received the 2 Month Notice, as she provided sufficient notice to vacate, in other words, at least two months' notice.

The landlord said her daughter did not move into the rental unit, as her intention was to share the rental unit with the landlord's niece. The landlord's niece was unable to come to Canada to start college because of a delay in getting a study permit. The landlord

filed a copy of an email from her niece, dated August 19, 2021, confirming a delay in getting the study permit.

In another email, the landlord's niece, dated June 11, 2021, stated that she had applied for a visa and study permit.

In response to my inquiry, the landlord confirmed that she served the tenant with the 2 Month Notice prior to her niece being granted a study permit, as they "just thought her niece would get the study permit".

The landlord submitted that her daughter did not move in as she is a full time student and was not able to afford rent.

Analysis

Based upon the oral and written relevant evidence and a balance of probabilities, I find as follows:

One month's compensation –

Under section 51(1) of the Act, a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The landlord confirmed not paying the tenant this compensation, the equivalent of one month's rent payable under the tenancy agreement.

I therefore find the tenant is entitled to a monetary award of \$1,400, which is the equivalent of one month's rent under this tenancy agreement.

Claim for equivalent of 12 times the monthly rent –

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

The 2 Month Notice was given to the tenant listing that the child of the landlord or landlord's spouse will occupy the rental unit.

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 landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the undisputed evidence is that the landlord's child has not occupied the rental unit since the effective date of the Notice of August 31, 2021, and the rental unit has been re-rented to other tenants paying a higher monthly rent, I find the landlord must pay the tenant the amount of \$16,800, the equivalent of 12 times the monthly rent of \$1,400.

Section 51(3) of the *Act* authorizes me to excuse the landlord from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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.

Tenancy Policy Guideline 50E outlines 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.

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.

In these circumstances, I find the landlord submitted insufficient evidence to show extenuating circumstances. The landlord ought to have waited until her niece received all the necessary documents to move to Canada to study prior to serving the Notice.

I find it was the landlords' choice to serve the Notice to the tenant prematurely. The landlord's daughter had the chance to move into the rental unit and find a roommate to help with the monthly rent as well.

As I have found the landlord must pay the tenant compensation equal to 12 times the monthly rent due under the tenancy agreement, or \$1,400 and as I have found insufficient evidence of extenuating circumstances preventing the landlord's daughter from occupying the rental unit, I find the tenant has established a monetary claim of \$16,800.

I find merit with the tenant's application and award recovery of the filing fee of \$100, pursuant to section 72(1) of the Act.

As a result of the above, I grant the tenant a monetary order of \$18,300, comprising \$1,400 for one month's compensation due under the Act for receiving the 2 Month Notice, the equivalent of monthly rent of \$1,400 for 12 months, or \$16,800, and the cost of the filing fee of \$100.

Should the landlord fail to pay the tenant this amount without delay, the tenant may serve the order on the landlord for enforcement purposes. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation for one month's rent of \$1,400 for receiving the 2 Month Notice, the equivalent of 12 months' rent of \$16,800 rental unit was not used for the stated purpose listed on the Notice, and recovery of the filing fee is granted. **The tenant has been granted a monetary order for \$18,300.**

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(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 12, 2022