



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FF

Introduction

This hearing was the reconvened hearing from the original Dispute Resolution hearing set for January 6, 2022. This hearing was adjourned as per my Interim Decision dated January 6, 2022. The reconvened hearing was set down for April 4, 2022 at 1:30 PM.

On June 14, 2021, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served a Notice of Hearing and evidence package to the Landlord by registered mail, in accordance with the Interim Decision dated January 6, 2022; however, she was not exactly sure when she did this. The Landlord confirmed that he received this package months ago. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was

sufficiently served the Notice of Hearing and evidence package. As such, this evidence will be accepted and considered when rendering this Decision.

The Landlord advised that his evidence package was served to the Tenants by registered mail on March 17, 2022, to the service address the Tenants used on their Application (the registered mail tracking number is noted on the first page of this Decision). However, the Tenant advised that they never received this evidence package. As this evidence appears to have been served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenants have been deemed to have received the Landlord's evidence. As such, this evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 15, 2014 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on May 28, 2021 after being served with the Notice. Rent was established at \$1,200.00 per month and was due on the first day of each month. A security deposit of \$500.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence.

All parties agreed that the Tenant was served the Notice on March 3, 2021. The reason the Landlord checked off on the Notice was because “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 previous landlord indicated on the Notice that the effective end date of the tenancy was May 15, 2021. As a note, as rent was due on the first of each month, the effective date of this Notice is incorrect. Pursuant to Section 53 of the *Act*, the effective date of the Notice will automatically self correct to May 31, 2021. A copy of this Notice was submitted as documentary evidence.

The Landlord advised that it was the intention that himself, his mother, and his grandmother were to move into the rental unit after the effective date of the Notice. He made submissions about his grandmother’s ailing health as a reason why they did not use the property for the stated purpose; however, he was advised that this person was not considered a close family member as defined by the *Act*. As well, he made submissions regarding his mother’s ailing health and why she did not move into the rental unit. While this person would be considered a close family member as defined by the *Act*, I do not find it necessary to address his submissions on these persons’ issues as the Landlord’s submissions were sufficient to make a determination on the Tenants’ claims.

The Landlord advised that he could not see into the rental unit before purchasing it; however, when he received possession back from the Tenants, the rental unit was “greasy and dirty”. He stated that he did not hire anyone to clean the rental unit, nor did he make a claim against the Tenants for this issue.

He testified that he moved in on June 2, 2021 and threw himself a party on June 6, 2021, for which he was issued a Violation Ticket for organizing and hosting a non-compliant event during COVID restrictions. He referenced the documentary evidence to support this fine. He submitted that a few days after moving in, his allergies “acted up” and that he felt “lightheaded”, so he consulted with some acquaintances that were in the “medical” industry. He stated that he was told that he should move out of the rental unit, so he did so on June 11, 2021. He claimed that there was mould and asbestos in the rental unit, and he referenced an asbestos report to support his position of why he moved out.

He acknowledged that he owns one third of the rental and that the other two thirds of the rental unit were sold to “acquaintances” on July 12, 2021. He also confirmed that the rental unit was demolished in mid-November 2021.

The Tenant advised that the Landlord took possession of the rental unit on June 1, 2021 and that he immediately re-listed it for sale within a week of this date. She referenced documentary evidence to support this claim. She also cited the pictures submitted to demonstrate that the rental unit was never occupied by the Landlord or a close family member.

As it is her belief that the Landlord did not use the property for the stated purpose, they are seeking compensation in the amount equivalent to twelve months’ rent (**\$14,400.00**) pursuant to Section 51(2) of the *Act*. In addition, they are seeking compensation in the amount of **\$958.23** for the cost of movers, and **\$191.77** for the gratuity that they paid the movers. She stated that the Landlord served this Notice in bad faith, and they would not have had to move. She referenced her documentary evidence to support their claims for compensation.

The Landlord confirmed that he re-listed the rental unit for sale within the first week of taking possession and that the Tenants would have had to pay for movers whenever they wanted to move anyways.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenants’ claim for twelve-months’ compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on March 5, 2021 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

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.

With respect to this situation, I also find it important to note that Policy Guideline # 50 states that "The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2)."

Finally, the Policy Guideline outlines the following about extenuating circumstances: "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

When reviewing the totality of the evidence before me, at the time the Notice was served, the Landlord advised that his intention was for him and/or a close family member to move into the rental unit and that the Notice was served in good faith. Based on doubts created by the Landlord's testimony, I am suspicious that this may have been the case; however, the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months, beginning within a reasonable period of time after the effective date of the Notice.

The consistent and undisputed evidence is that the effective date of the Notice self corrected to May 31, 2021. While the Landlord confirmed that he moved in on June 2, 2021, he also vacated the rental unit on June 11, 2021. As well, he acknowledged that no other person moved into the rental unit. Furthermore, he also testified to listing the rental unit for sale in the first week of taking possession, that he sold a portion of the rental unit to "acquaintances" on July 12, 2021, and that the rental unit was demolished in mid-November 2021, which is within six months of the effective date of the Notice. Clearly, there is no doubt that the Landlord did not use the property for the stated purpose for at least six months after the effective date of the Notice.

As such, the only matters I must consider here are whether the Landlord had any extenuating circumstances that prevented him from using the rental unit for at least six months within a reasonable period of time after the effective date of the Notice, for the stated purpose on the Notice. Given the contradictory testimony and positions of the parties, I must turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

In assessing the Landlord's submissions with respect to his extenuating circumstances, he suggested that the rental unit was unsafe to live in due to the condition it was left by the Tenants, and because of the asbestos in the rental unit. Firstly, while the Landlord claimed that the rental unit was "greasy and dirty", I note that he has not submitted any documentary evidence to corroborate the alleged state of the rental unit at the end of

the tenancy. Furthermore, there is no documentary evidence that the Landlord ever hired cleaners to rectify these alleged issues, nor did the Landlord apply against the Tenants for any claims with respect to this purported condition. Moreover, despite this suggested condition, the Landlord still deemed it appropriate to host a party on June 6, 2021, during a time of a COVID pandemic where such an event was prohibited, no less. I find the Landlord's submissions to be highly illogical and suspicious.

Regarding the Landlord's claims of illness, I find it important to note that he has not submitted any medical documentation corroborating any suggestion of ill health. Furthermore, while he claimed to have solicited opinions about his ailing health from acquaintances that were in the "medical" field, he has not provided any qualifications of any of these people that he consulted with. Given my doubts of the legitimacy of his testimony above, I find there is little here which would possibly make me even consider any portion of this testimony to be valid.

When reviewing these submissions, I find that they are not logical, nor are they consistent with common sense or ordinary human experience. As such, I reject his claims with respect to the condition of the rental unit at the end of the tenancy, and I find that the questionable and contradictory testimony from him causes me to be sceptical of the truthfulness and credibility of his submissions on the whole. Given that he listed the rental unit for sale within the first week of June 2021, and given that the rental unit was demolished within six months of the effective date of the Notice, I find it more likely than not that it was never the Landlord's intention for him or a close family member to occupy the rental unit.

In my view, it is evident that the Landlord likely believed it appropriate to host a party in the rental unit, in spite of being prohibited from doing so during the state of emergency, prior to demolishing it in the future. I find that this decision of hosting a party, contrary to what was permitted at the time, demonstrates a pattern of poor judgement on the Landlord's part, and this is consistent with his dubious and non-sensical submissions with respect to why he served the Notice, and his subsequent claims of extenuating circumstances.

Moreover, while the Landlord claimed that the rental unit was not habitable due to the presence of asbestos, I note that the Landlord could not point to any part of the submitted report which indicated that the rental unit was not habitable due to asbestos. While I acknowledge that the rental unit may have contained asbestos, generally this is not a hazard unless the asbestos has been disturbed. Furthermore, even if I were to

accept that there was an asbestos hazard, it is not clear how this would qualify as an extenuating circumstance as it would be the Landlord's responsibility to do his due diligence prior to purchasing the rental unit. Given that the Landlord did not provide any documentary evidence of asbestos in the rental unit that has been disturbed, nor has he provided any documentation confirming that the rental unit was unsafe to occupy, I reject the Landlord's submissions on this point.

In assessing the Landlord's claims of extenuating circumstances that prevented him from using the property for the stated purpose for at least six months after the effective date of the Notice, I find his testimony to be dubious and untruthful, and his credibility to be entirely lacking. I am doubtful that there were any deficiencies in the rental unit that would have rendered the rental unit unfit for habitation. Consequently, I reject the Landlord's submissions on the whole, as they are not compelling and entirely unpersuasive. Ultimately, I am satisfied that the Tenant is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$14,400.00**.

With respect to the Tenant's other claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Tenants' claims for compensation in the amounts of \$958.23 and \$191.77 for the costs of moving, I acknowledge that whenever the Tenants would have eventually moved from the rental unit, they would have had to pay for movers regardless. However, given that it is evident that this Notice was not likely served in good faith, I grant the Tenants a monetary award, in the amount of **\$958.23**, for the cost of their move. With respect to their claim for the gratuity that they paid their movers, I reject this in its entirety.

As the Tenants were partially successful in these claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

12 months' compensation	\$14,400.00
Movers	\$958.23
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$15,458.23

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$15,458.23** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 8, 2022

Residential Tenancy Branch