



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

On February 1, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing, with S.H. attending as a co-tenant. The Landlord attended the hearing as well, with P.S. attending as an agent for the Landlord. 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 the Notice of Hearing package and some evidence to the Landlord by registered mail on or around February 9, 2022. The Landlord confirmed that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Notice of Hearing package and some evidence.

She then advised that additional evidence was served to the Landlord on April 28, 2022, by email. The Landlord confirmed that she received this evidence; however, she stated that it was served too late, and she did not have time to review or respond to this

evidence. As this additional evidence was not served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I am satisfied that the Landlord was not sufficiently served with the Tenant's additional evidence. As such, this evidence was not accepted and will not be considered when rendering this Decision. Only the evidence served with the Notice of Hearing package will be accepted and considered when rendering this Decision.

The Landlord advised that her evidence was served to the Tenant by registered mail at least three weeks prior to the hearing. The Tenant acknowledged that she received this evidence. As this evidence was served within the timeframe requirements in accordance with Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenant was sufficiently served with 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

- Is the Tenant entitled to a Monetary Order for 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?

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 or around March 2018. However, the Landlord advised that the tenancy ended when the Tenant gave up vacant possession of the rental unit on August 18, 2021, and the Tenant advised that the tenancy ended when she gave up vacant possession of the rental unit on July 12, 2021. Rent was established at \$1,774.00 per month and was due on the first day of each month. A

security deposit of \$875.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

While a copy of the Notice was not submitted by either party, the details on the Notice were discussed and confirmed with both parties. The Landlord advised that she no longer had a copy of the Notice. The Tenant was permitted to submit a copy of the Notice for consideration by uploading it to the Tenant's file by the end of day on May 12, 2022. However, the Tenant failed to do so.

Regardless, all parties agreed that the Tenant was served with the Notice on April 30, 2021. The reason the Landlord checked off on the Notice was because "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)." As well, the Landlord checked off the box indicating that "The landlord or the landlord's spouse" would be occupying the rental unit. The effective end date of the tenancy on the Notice was noted as June 30, 2021.

P.S. advised that the Landlord did not receive vacant possession of the rental unit back until August 18, 2021, and he cited text messages from the Tenant up until that date where the Tenant continually made excuses for not moving out in accordance with the effective date of the Notice. He testified that the Tenant claimed she had problems moving into her new rental unit, that the Tenant never returned any keys, and that the Tenant left furniture behind. He cited text messages from the Tenant, around July 27 to 30, 2021, where the Tenant stated that she was attempting to make arrangements to move. He then referred to a text message from the Tenant, dated August 12, 2021, where the Tenant acknowledged that she was still occupying the rental unit, and that her mother had lost the keys to the rental unit.

In addition, he advised that the Landlord requested by text or email that the Tenant meet to do a move-out inspection in August 2021; however, the Tenant declined to meet and informed the Landlord to keep the security deposit. He submitted that the Tenant caused extensive damage to the rental unit, and left it in such a state of disrepair that it was uninhabitable. He stated that there was so much garbage left behind that they took 19 truckloads of refuse to the dump. As well, there was a rat issue in the rental unit, and it took 40 days to clean up the property. Furthermore, in order to commence rectifying all the damage that the Tenant caused to the rental unit, including extensive water damage, a considerable amount of time was spent procuring a contractor, as many of them would not take on the work as it was so extensive, and they recommended completely gutting the rental unit instead. He referred to the

documentary evidence submitted to support this position. In addition, he testified that the Landlord had a contractor hired for July 1, 2021 to commence repairs; however, as the Tenant still occupied the rental unit, this contractor could not wait and took another job.

Based on the deplorable condition that the Tenant left the rental unit in, it took four months to bring it back up to a habitable state. Once the repairs were completed in January 2022, the Landlord moved into the rental unit immediately, as was originally planned based on the effective date of the Notice. He referenced the documentary evidence submitted of the Landlord's correspondence of her new address.

The Tenant acknowledged that she had difficulty moving into her new residence, but insisted that she gave up vacant possession of the rental unit on July 12, 2021. She confirmed that her mother lost the keys to the rental unit and that she informed the Landlord to keep her security deposit; however, she was not sure of when she told the Landlord this. She claimed that the Landlord never asked to conduct a move-out inspection, and she assumed that the text messages that P.S. referred to were incorrect.

She confirmed that the Landlord's pictures of the condition of the rental unit at the end of the tenancy were accurate, although she stated that some of the damage was not due to their negligence. She also confirmed that the debris left behind was theirs, that she gave up the security deposit because of "minor damage", and that that she attempted to repaint the rental unit, but that attempt was unsuccessful.

S.H. advised that they passed by the rental unit on occasion, that it was vacant, and that the Landlord only moved into it in February 2022. He stated that the damage to the rental unit was not as bad as the Landlord's pictures, and he could not believe that it would have taken the Landlord so long to repair the rental unit.

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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the

effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. Given that the Tenant did not submit a copy of the Notice as instructed, it is not possible to view this to determine if it is a valid Notice. However, as the parties agreed that the discussed details of the Notice were correct, I will proceed with this Decision based on it being a valid Notice.

With respect to the Tenant's claim for twelve-months' compensation owed to her 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 April 30, 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.

Regarding this situation, I also find it important to note that Policy Guideline # 50 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 and testimony before me, I note that the Landlord advised that it was her good faith intention to move into the rental unit. 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 after the effective end date of the Notice.

As the consistent and undisputed evidence is that the Landlord did not do so, I must then consider the submissions with respect to extenuating circumstances. Furthermore, I note that the burden on proof lies with the Landlord in this type of Application to prove the existence of extenuating circumstances.

I also find it important to note that 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.

When reviewing the totality of the evidence, I have before me the Landlord's pictures of the alleged condition that the Tenant left the rental unit in at the end of the tenancy. As well, I have the Tenant's acknowledgement that these pictures were an accurate depiction of how the rental unit was left. While it is the Tenant's position that there was

“minor damage” left behind, as she agreed that these pictures were an accurate reflection of the condition, I reject the Tenant’s claims of minor damage. When reviewing these pictures, the condition that the Tenant left the rental unit in was shockingly unacceptable, shameful, and the unit was clearly not habitable by any stretch of the imagination. I find the fact that the Tenant surrendered the security deposit supports the finding that she knew that the rental unit was not left in an acceptable state. Moreover, I find that her simple, offhand explanation of her mother simply losing the keys to the rental unit while continuing to live there for some length of time further supports a pattern of behaviour from the Tenant that is demonstrative of a lack of care or ambivalence for the property. Finally, while the Tenant claimed that she unsuccessfully attempted to paint the rental unit prior to giving up vacant possession, based on the pictures, I find it highly doubtful that the Tenant even legitimately made this alleged attempt.

In weighing the evidence before me, I find that the Tenant’s questionable and dubious submissions cause me to doubt the reliability of her testimony, and her credibility on the whole. I find that I prefer the Landlord’s evidence that the Tenant left the rental unit in an appalling, unacceptable, and deplorable condition that prevented her from moving into the rental unit. Furthermore, I accept, on a balance of probabilities, that this presented the Landlord with an unforeseen, extenuating circumstance.

Moreover, given the inconsistencies in the Tenant’s submissions, and the doubts created by her testimony and that of S.H., I do not find it likely that the Tenant gave up vacant possession of the rental unit on July 12, 2021 as she alleged. Given that she acknowledged that she had difficulty moving into her new rental in accordance with the effective date of the Notice and that she overheld in the rental unit, in conjunction with her already dubious testimony, I find it more likely than not that she did not give up vacant possession of the rental unit until August 18, 2021. As such, this further delayed the Landlord’s ability to attempt to use the rental unit for the stated purpose after the effective date of the Notice.

When considering all of these factors in their totality, I find, on a balance of probabilities, that the Tenant’s negligence created the extenuating circumstances that prevented the Landlord from moving into the rental unit after the effective date of the Notice. I find it more likely than not that had the Tenant not destroyed the rental unit and gave up vacant possession on the effective date of the Notice, then the Landlord would have moved in immediately after the effective date of the Notice. As such, I am satisfied that

the Tenant is not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*.

Conclusion

Based on my findings above, I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

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: May 18, 2022

Residential Tenancy Branch