



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 as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 27, 2021 ("Two Month Notice"); and to recover the \$100.00 cost of her Application filing fee.

The Tenant and the Landlord, J.D., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. One witness for the Landlord, T.N. ("Witness") was also present and provided affirmed testimony, although a minimal amount. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, the Landlord advised me that she was the new owner, and

that the company identified as the owner on the Tenant's Application is the former landlord. As such, I amended the Respondent's name in the Application to the new owner, pursuant to section 64 (3) (c) and Rule 4.2.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 1, 2004, with a (final) monthly rent of \$780.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$297.50, and no pet damage deposit. They agreed that the Landlord returned the security deposit to the Tenant at the of the tenancy. The Tenant said she moved out on March 31, 2021, and the Parties agreed that the Tenant gave her forwarding address to the Landlord in writing.

The Tenant submitted a copy of the Two Month Notice, and the Parties agreed that the tenancy ended, because the Landlord served the Tenant with this eviction notice. They agreed that the Two Month Notice was signed, dated January 27, 2021, and was served to the Tenant in person on January 27, 2021. The Two Month Notice had an effective vacancy date of March 31, 2021. The ground for the eviction listed on the Two Month Notice was that all of the conditions for the sale of the rental unit had been satisfied; and further, that the purchaser had asked the landlord in writing to give this Notice because the purchaser or a close family member intended in good faith to occupy the rental unit.

The Tenant applied for compensation pursuant to section 51 of the Act, because she asserts that the new Landlord has not fulfilled the stated purpose on the Two Month Notice. The Tenant declares that she is, therefore, eligible for compensation from the Landlord pursuant to section 51 (2) of the Act.

In the hearing, I asked the Tenant to explain what she seeks from this proceeding, and why I should grant her a monetary order for the amount sought. The Tenant said:

The reason I submitted the application is it came... – my understanding was that this was an eviction for the new owner to occupy the suite for a family member. But I came to realise that I was not evicted for that reason, that it was to update the suite and rent it at a higher price. So, as time went on and I realized this was what was happening, I applied for 12 months of compensation.

The current owner hasn't acted in good faith. It has not been occupied by a family member. It was posted in an ad on [local advertising website] for a greater amount of rent. It was supposed to have a family member occupy the suite. I was evicted after living there for 17 years. She did not do the right thing.

The Landlord replied, as follows:

The good faith part may be incorrect. I don't think [the Tenant's] wrong in this matter. When I purchased this building - I am a first-time homeowner - I purchased it in April 2021, and it was my intention to move in. I started to furnish it, and I was currently renting a place on a one-year rental. I started to move in and exit my one year rental by May 20th. After 3 days of possession, the toilet had flooded and the carpets were damaged. This was not caught in the inspection report.

My first few nights I started to get major allergies. The carpets needed to be replaced, and it was in poor condition. It wasn't habitable. But I still had two months, so I started to get quotes for getting the carpet replaced. Plumbers were available, but with supply chain issues, it wasn't possible to get the carpets replaced until August 2021. It was completed in early September.

I was in a tricky position. I would need somewhere to live for awhile, so, in my rental, I had to sign another one-year lease to stay there. I had the mortgage of my new home and my rental amount to pay.

I was aware of the rules that you can't renovate and rent a place. In terms of the renovation, I touched up paint, replaced a faucet, a toilet, and carpets. I had to sign another one-year lease. I can't rent it ... but I decided I'll rent it out in October for a 4-month period. I would get some income, until I could be out of my one-year lease and move in.

So, I was not staying and sleeping in this place. She noticed there was bathroom stuff coming up and down the stairs. The renovations were complete around the

end of the summer.

Then in February this year, I was able to negotiate with my landlord an early – a mutual agreement to end tenancy there early. So, I now reside in the unit.

In my mind, I feel very badly about anyone who gets evicted after living there for 17 years. I've shared what happened and my intentions, but I didn't use the place fully, due to the reasons I've given. I currently live there and it is my sole and primary residence. I have no intention of renting it out. I bought his place so I could live in it.

The Tenant said:

I think back to when I viewed – I viewed it as a rental [the Landlord advertised]. What brought it to my attention was being in contact with the resident who lived below me. She noted that there was never anybody up there - maybe a couple items were changed. When I viewed the suite, the old carpet was still in it. New carpeting would be going in before the new tenant moved in. There was never any mention of her planning to move into this suite. I don't understand why I'm given a Two Month Notice that she was going to live in it, and put it up six months later for full rent. The carpet wasn't replaced, not until October 1st. She never mentioned anything about any bathroom issues or toilet flooding,

The Tenant submitted a written statement regarding her having viewed her old rental unit on September 21, 2021, when it was up for rent "at almost double the rent I was paying", she said.

At the end of the hearing, I asked both Parties if they had any last statements before we ended, and the Tenant said: "No, I've submitted all my evidence. I feel I was evicted unfairly. So, I think that's all."

The Landlord said:

An individual who – [the Tenant] had used a different name - I didn't feel it necessary to disclose my whole back story. I felt a little uncomfortable, because she was looking in cupboards. It felt a bit strange. I didn't disclose additional information beyond 'here it is'. It's true it was primarily unoccupied for the six months previous. I had no renter, because I was aware of the rules; but there is no threshold as to how many nights I needed to stay there. I do reside her now as if April 1st, 2022.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Section 51 (2) of the Act states that a landlord must pay the tenant an amount that is equivalent to 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.

In the Two Month Notice, the previous landlord indicated that the buyer of the residential property, or a close family member of the buyer, intends to occupy the rental unit.

The Tenant gave evidence that instead of being occupied by the Landlord or a family member, the rental unit was placed on the market for rent. The Tenant said that she saw the rental unit listed for rent some months after she had vacated it. The Tenant said she called the new owner to make an appointment to see the rental unit.

There is no dispute that the Landlord rented the unit to another tenant six months after the Tenant vacated the rental unit. The Landlord's evidence is that she intended to move into the rental unit as soon as possible after the Tenant moved out; however, after moving some of her things in there and staying in the suite, the toilet flooded, which destroyed the carpeting. As such, the Landlord had to arrange to repair the toilet and replace the carpeting. The Landlord determined that at that stage, the suite was uninhabitable. She had to find somewhere else to live until the suite was ready for occupation. However, the Landlord was required to sign a one-year lease, from which she felt she could not escape. The Landlord confirmed that she has now moved into the rental unit, as of April 1st, 2022.

Section 51 (3) of the Act states:

(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.

As explained in Policy Guideline 50 ("PG #50"):

Section 51 (2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end the tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

[emphasis added]

PG #50 also explains "extenuating circumstances", as follows:

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are 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.
- A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

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.

[emphasis added]

I find that the Landlord tried to use the rental unit for the purpose set out on the Two Month Notice within two months of the Tenant vacating the unit; however, intervening factors dictated that the Landlord would have to do renovations before she could move in permanently.

I find the unexpected, but necessary renovations to fix the toilet and the flooring were reasonable extenuating circumstances for not moving in within the first six months of the tenancy I find this is particularly the case, given the well-known difficulty people have in getting trades work done, given the pandemic. I find these were outside of the Landlord's control. However, given her commitment to a fixed-term tenancy agreement, the Landlord delayed moving in another six months and rented the unit to someone else in the meantime, which is not part of the purpose of the Two Month Notice.

I must determine whether the fact that the Landlord signed a fixed-term tenancy agreement was another extenuating circumstance that prevented her from occupying the rental unit. If I look at the circumstances facing the Landlord as a whole, these included the flooding of the suite, the need for renovations, and the well-known state of the rental market in this city. I find it more likely than not that anyone trying to find a rental unit in this city is not likely to find the exact circumstances they need, such as a lease-free, short-term rental with an unknown end date. As such, I find that in this set of circumstances, the Landlord fulfilled the purpose of the Two Month Notice as soon as she could, given the extenuating circumstances that I accept as having prevented her from moving in. I find the Landlord's actions in this regard are consistent with a good faith intention to move in as soon as reasonably possible.

As such, I dismiss the Tenant's Application wholly for compensation related to the a notice to end tenancy for the Landlord's use of the property, and for recovery of the \$100.00 Application filing fee.

Conclusion

The Tenant is unsuccessful in her Application. The Landlord provided sufficient evidence to meet her burden of proof in this matter. I found that the Landlord proved on a balance of probabilities that a series of extenuating circumstance prevented her from fulfilling the purpose set out in the Two Month Notice within a six month period. As such, the Tenant's Application is dismissed wholly without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 17, 2022

Residential Tenancy Branch