



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on August 16, 2021 seeking compensation for the end of the tenancy, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 5, 2022. This was a new hearing based on the Review Consideration decision of March 10, 2022 wherein a different Arbitrator found the Respondent was unable to attend the previous hearing because they were unaware that it was rescheduled.

Both the Tenant and the rental unit Purchaser (hereinafter the “Landlord”) attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, both parties confirmed they received the prepared documentary evidence of the other. On this basis, the hearing proceeded as scheduled.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the Notice to End Tenancy for the landlord’s Use of Property (the “Two-Month Notice”), pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Though neither party submitted a copy of the tenancy agreement, they both confirmed details in the hearing. The tenancy started on September 1, 2012, 8.5 years prior to the final date of June 30, 2021. The Tenant provided the most recent notice of rental increase to show the rent amount they paid at the end of the tenancy was \$1,859.13 as of August 1, 2019.

The property was sold in 2021 to this Landlord. By way of a Buyer's Notice to Seller for Vacant Possession, they required the previous Landlord to issue the Tenant a Two-Month Notice, for the tenancy end date on June 30, 2021. A copy of that document is in the Tenant's own evidence.

The previous Landlord issued the Two-Month Notice on April 27, 2021. In the hearing, the Tenant acknowledged accepting service by signing for it on that date. This set the end-of-tenancy date for June 30, 2021. The Tenant provided this was the date they moved out from the rental unit.

The Two-Month Notice specified that the purchaser (i.e., the Landlord here) or their close family member intended in good faith to occupy the rental unit.

The Tenant noticed an advertisement for rental availability online approximately 5 weeks after they moved out. As stated in the hearing, they felt that they were to be getting first notice of the availability of the rental unit in this situation. They stated a friend forwarded the online ad to them, and they noticed the rental unit right away because of the image of the fireplace. In the copy of the ad in the evidence, the Landlord sought \$2,800 in rent. In the hearing, the Tenant provided that this ad was online on August 3, 2021.

The Tenant reiterated that the rent amount in question was substantially more than what they paid to the end of the tenancy. Additionally, they ran a business from the rental unit, and it was very difficult to find a place to accommodate that special need.

The Tenant makes the claim for reimbursement of twelve months' rent, totalling \$22,420. This was because they had proof that the Landlord and their family would be living there; however, this was not the case.

The Landlord provided a document, undated, setting out their position, containing the following points:

- they wanted to retire in the warmer area of the province wherein this rental unit lies
- after the sale completion on June 30, they did some renovations, replacing kitchen cabinets, appliances, and painting inside and outside
- in the third week of July, they were informed of their spouse's knee surgery for August 16 – they provided proof of this in the form of a confirmation email dated July 30, 2021
- they received notice of a heart CT on September 3 – this was post-Covid complications involving blood pressure and pulse decrease, and oxygen absorption – the Tenant named the cardiologist involved with this process
- the knee surgery was postponed due to “breathing difficulties and heart issues/lung related”
- these 2 procedures entailed blood work, knee support and physiotherapy
- they left the rental unit empty for a couple of weeks because of the increasing difficulty of travelling
- in August they decided to rent the property because they could not leave it empty – in an attached letter, the property manager attested to the presence of a homeless person living in the yard, prompting their advice to the Landlord to rent
- the surgery was postponed, and on November 22 the Landlord received notice of the rescheduled surgery for December 9.

In the hearing, the Landlord responded to the Tenant's submissions. They set out the material from their written account set out above. The surgery, heart procedure, and all medical follow-up appointments that entailed all equate to a situation imposing a health challenge that prevented them from moving into their new home (i.e., the rental unit). When presented with this challenge, they spoke to the realtor who advised they should not leave the rental unit empty. This meant their option was to rent it out and the property manager had the unit rented out in September.

The Tenant questioned the veracity of this information when the situation with health was known to the Landlord well in advance.

The Landlord reiterated that the notice for the knee surgery was quite sudden. Concerning the heart issue, they initially did not know the extent of the damage stemming from a Covid infection in January 2021.

Analysis

The *Act* s. 49 allows for a landlord to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in the situation where a landlord issues a Two-Month Notice. This is covered in s. 51:

- (1) A tenant who receives a notice to end tenancy under s. 49 is entitled to receive from the landlord . . . an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (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
 - (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose of 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 . . . 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, 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.

Here, the Landlord issued the Two-Month Notice on April 27, 2021. The Tenant did not challenge the validity of the Two-Month Notice and moved out by June 30, 2021. Friends advised the Tenant of an online ad showing the rental unit available for new tenants.

I find the evidence shows the Landlord tentatively made steps to accomplish the stated purpose of issuing that Two-Month Notice. The evidence shows that they had the intention to move to the area. I find the evidence shows their plans were interrupted with the scheduling of a surgery in the interim. The entire process was complicated by cardiovascular procedures – and this was based on infection from a virus with many unknown symptoms and residual effects along the way. I find the Landlord's document evidence is sound in showing relatively sudden scheduling of surgeries, a process which was itself unexpectedly delayed.

I find these are extenuating circumstances that prevented the Landlord from accomplishing the stated purpose of the use of the rental unit. Therefore, I excuse the Landlord from paying the monetary amount outlined in s. 49(2). I dismiss this portion of the Tenant's Application without leave to reapply.

Because they were not successful in their Application, there is no reimbursement of the Application filing fee to the tenants.

Conclusion

For the reasons outlined above, I dismiss the Tenant's claims, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 10, 2022

Residential Tenancy Branch