



Dispute Resolution Services

Page: 1

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 Notice to End Tenancy for Landlord's Use of Property dated April 17, 2021; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, T.G., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about it. During the hearing, the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. 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.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on September 25, 2021, but that it was returned to the sender; she said she also sent a registered mail package with evidence on October 20, 2021, but it was returned to the sender, as well. The Tenant said she sent a third registered mail package with more evidence on January 8, 2022, but the Landlord refused to accept it, according to the Canada Post registered mail website. The Tenant

provided Canada Post tracking numbers as evidence of service of these three packages.

According to RTB Policy Guideline 12, “Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing.” Accordingly, I find the Tenants served the Notice of Hearing documents on the Landlord on September 30, 2021, five days after it was mailed to the Landlord. I find the other registered mail packages noted above were also deemed served to the Landlord, pursuant to section 90 of the Act.

Given this evidence and authority, as well as the Tenant’s testimony noted below, I find that the Landlord was deemed served with the Notice of Hearing documents and evidence in accordance with the Act. I, therefore, admitted the Tenant’s Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant provided the Parties’ email addresses in the Application and she confirmed these in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised her that she was not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Tenant affirmed that she was not recording the hearing.

Issue(s) to be Decided

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

Background and Evidence

The tenancy agreement states, and the Tenant confirmed in the hearing that the periodic tenancy began on September 15, 2020, with a monthly rent of \$2,550.00, due on the first day of each month. The Tenant said that they paid the Landlord a security deposit of \$1,275.00, and a pet damage deposit of \$1,275.00. She said that these

deposits were returned in full by the Landlord after the tenancy ended on July 16, 2021.

The Tenants submitted a copy of the Two Month Notice, and in the hearing, the Tenant confirmed the following details of it. The Two Month Notice was signed and dated April 17, 2021, it has the rental unit address, it was served in person on April 17, 2021, with an effective vacancy date of July 31, 2021. The Two Month Notice was served on the ground that 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. I asked the Tenant to explain her claim to me, and she said:

We were wrongly evicted, because they said they were going to move in, and the house is currently still vacant. We could have still been living there and not have had to move, and had all the moving expenses. Our rent is now \$1,000.00 more. The property next door is being developed. They came multiple times to do surveying, measuring, and putting spikes in the ground all over the property by the time we left.

The next door neighbour would see someone there in passing, but not very often. Him not selling might possibly affect the property we were in; they are narrow and deep lots and on a hill. The house on the other side was demolished - it was bull-dozed - and they were clearing trees, and starting to dig out for foundations and stuff; it was getting developed.

I asked the Tenant how she knew the residential property was empty, and she replied:

We have driven by multiple times to make sure. The driveway was steep, and there were leaves covering the driveway in the fall, but no tire tracks. There's a chain across the end. It was listed for sale again for several million dollars. There's a path behind the house, so that you can see. There are no cars, no patio furniture, no blinds, no tracks up the long, steep driveway – it is very noticeable when someone drives up. The mail box is full – the notices of our registered letter were in there.

We sent it twice to the address that came up on line for [the Landlord], and once to the rental address, and put it in the mailbox of the rental address. We tried really hard to serve them.

One time with registered mail, the letter magically appeared in our mailbox.

When it was not picked up... we think that this time he got it, but he just returned it to us. The post office said they can't give the letter back without signing for it, but magically it was in our mail box. It had tape on the back.

I asked if I had heard the Tenant say it had been listed for sale again, and she replied:

Sometime since we moved out it was listed for sale. I called the real estate agent asking about it. The amount listed for was very unreasonable - several million higher than it should have been. It looks like they were just fishing.

The house is still empty, and they surveyed it – there are pegs for development. If they don't move in, we're eligible. We've been through a whole lot of stress and – evicted twice during Covid.

Analysis

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

As explained in Policy Guideline 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 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]

A two month notice to end the tenancy for landlord's use is served pursuant to section 49 of the Act. The effective vacancy date on the Two Month Notice before me was July 31, 2021, and I find that within six months, by January 31 2022, the stated purpose for the Two Month Notice had not been accomplished. The Tenant said the residential property was still empty and that there were surveying pegs placed in the property.

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.

No one attended the hearing on behalf of the Landlord to explain their version of events, and whether there were any extenuating circumstances preventing them from pursuing the purpose stated in the Two Month Notice for the eviction.

Based on the evidence before me, overall, I find that the Tenants are successful in their Application, because I find the Landlord breached section 49 and 51 of the Act, by not taking steps within a reasonable period after the effective date of the Two Month Notice to accomplish the stated purpose for ending the tenancy.

I, therefore, award the Tenants **twelve times their \$2,550.00 rent** or \$30,600.00 pursuant to sections 49, 51, and 62 of the Act. Given their success, I also award the Tenants recovery of their \$100.00 Application filing fee, pursuant to section 72 of the Act. Accordingly, I award the Tenants with a Monetary Order of **\$30,700.00** from the Landlord, pursuant to section 51 (2) of the Act.

Conclusion

The Tenants' claim for recovery of 12 times the monthly rent is successful in the amount of \$30,600.00, as they met their burden of proof in this regard on a balance of probabilities. The Tenants are also awarded recovery of their \$100.00 filing fee for this Application from the Landlord.

I grant the Tenants a **Monetary Order** under section 67 of the Act from the Landlord in of **\$30,700.00**. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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 12, 2022

Residential Tenancy Branch