



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with the Applicant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51(2) of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, PM, and the Applicant, MU, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Applicant confirmed that she personally served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing in October 2021 (the "NoDRP package"). The Applicant also testified that she served the Landlord with the NoDRP package on October 18, 2021 by Canada Post registered mail. The Applicant referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. Canada Post reports that the package was returned to the sender; however, the Landlord confirms receipt of the registered mail delivery. I find that the Landlord was

deemed served with the NoDRP package five days after mailing them on October 23, 2021 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord testified that he served his evidence by email, and the Applicant confirms receipt of the Landlord's evidence. I find that the Landlord's evidence was sufficiently served on the Applicant on May 11, 2022 in accordance with Section 71(2) of the Act.

Issues to be Decided

1. Is the Applicant entitled to an Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
2. Is the Applicant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Applicant uploaded the tenancy agreement showing that the tenancy began as a fixed term tenancy on April 1, 2016. The fixed term ended on March 31, 2017, then the tenancy continued on a month-to-month basis. Monthly rent was \$725.00 payable on the first day of each month. The residential property has an upper vacation rental unit, and two basement units. One of the basement units was the Applicant's. The Applicant left the rental unit shortly after receiving the Four Months' Notice.

The reason to end tenancy noted on the Landlord's Four Months' Notice was that the Landlord was going to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property. No permits and approvals are required by law to do this work. The effective date of the Four Months' Notice was September 1, 2021.

The Applicant states the eviction was not issued in good faith. She stated when she moved out, the neighbours told her that a new tenant moved into her old basement suite. She submits that a company was working for the Landlord as his property manager. She states this is confirmed in his bank statements. The Applicant states that the Landlord did not provide T4s which illustrate that he was paying anyone as his caretaker for the residential property.

The Landlord testified that his caretaker of the residential property moved into the rental unit on September 5, 2021. She was to remain as the caretaker up to May 2022, but she moved out in April 2022 due to medical issues. Now the Landlord is living in the rental unit part-time, every weekend until the middle of June 2022. The Landlord said the rental unit will become his primary residence around the middle of June 2022 onwards.

The Landlord uploaded a notarized statement from the person who became his professional Airbnb caretaker. It states:

October 4, 2021

My name is [name] and I work as a professional vacation rental caretaker. I currently am the caretaker for [Landlord's business name] located at [rental unit address]. I began this position September 5, 2021. Prior to this I was a caretaker at vacation properties on [island] which I still manage remotely from [town].

*[signed]
[name]*

The Landlord testified that the caretaker's responsibilities were to maintain rodent traps around the unit, maintain a visitor calendar, unlock doors for new guests, maintain internet if out, collect mail, do minor paint touch-ups, clean the driveway, and stock cleaning supplies. The Landlord offered her free rent for the work she did at the property, and did not pay her a traditional salary. The Landlord hired a cleaning company in town who did the major clean ups for the vacation rental in the upper floor unit.

The company that does the major cleaning of the vacation rental unit, also does deliveries (e.g. bakery pick ups of pastries or fresh bread), car detailing, and dog walking. The Landlord recently received word from this company that they also can advertise the Landlord's vacation rental unit on their website.

The Applicant asserts that the Landlord did not do the stated purpose he said he would do in the Four Months' Notice and seeks 12 months rent compensation.

That Landlord states he did do what he said he would do and used the rental unit to house his caretaker who resided there for about eight months.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Sections 49 and 51(2) of the Act are the relevant parts of the legislation in this matter. They state:

Landlord's notice: landlord's use of property

49 ...

- (6) *A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:*

...

- (e) *convert the rental unit for use by a caretaker, manager or superintendent of the residential property;*

...

Tenant's compensation: section 49 notice

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 the landlord or purchaser, as applicable, does not establish that*

- (a) *the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and*
- (b) *the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at*

least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The effective date of the Landlord's Four Months' Notice was September 1, 2021. The Applicant moved out of the rental unit soon after receiving the Four Months' Notice in May 2021. The Landlord brought in a caretaker for his vacation rental property at the beginning of September 2021. The Landlord submitted that his caretaker was to stay until May 2022 but left in April 2022 due to medical reasons. By the time the caretaker left, she had been residing and working from the rental unit for eight months.

I find the Landlord had the requisite good faith intention when he brought in a caretaker to maintain his vacation rental home above the rental unit in which the Applicant resided. The caretaker stayed in the rental unit for eight months, which is more than the minimum six-month time period required under the Act. I find that the Applicant has not proven on a balance of probabilities that the Landlord did not accomplish the stated purpose for ending the tenancy, and did not do this within a reasonable period after the effective date of the Four Months' Notice. Accordingly, I dismiss the Applicant's dispute resolution application seeking compensation from the Landlord pursuant to Section 51(2) of the Act without leave to re-apply.

As the Applicant was not successful in her claim, I do not grant her recovery of the application filing fee.

Conclusion

I dismiss the Applicant's dispute resolution application without leave to re-apply.

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

Dated: June 14, 2022

Residential Tenancy Branch