



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), issued on July 17, 2019, with an effective date of September 30, 2019.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary and Procedural Issues

In this case, the landlord raised the issue in their submission that the tenant did not make their Application for Dispute Resolution within 2 years of the tenancy ending. Although I accept the landlord gave the Two Month Notice with an effective date of September 30, 2019, and the tenants made their application on November 26, 2021, which would be outside the statutory time limit.

However, the parties were at a hearing on November 19, 2019, and had agreed to extend the effective date of the Notice to December 15, 2019, and the tenancy ended on this date. Clearly the landlord had to have known the tenancy ended on December 15, 2019. Therefore, I find the tenant did file their application with the two years of the tenancy ending. I have noted the file number of this previous hearing on the covering page of this decision.

I note the landlord has filed a monetary worksheet dated May 5, 2022, in the amount of \$3,771.45. However, the landlord did not make an Application for Dispute Resolution. The landlord cannot simply file a monetary worksheet as evidence and expect that matter to be heard. If the landlord truly felt they had the right to claim for damages they were required to make that Application for Dispute Resolution within 2 years of the tenancy ending. I find this is simply a retaliation of the tenant filing their Application and I have not and will not consider the merits of this claim as it not before me and would be barred from being heard.

Issue to be Decided

Is the tenant entitled to compensation that is the equivalent of 12 times the monthly rent?

Background and Evidence

The tenancy September 1, 2015. Rent in the amount of \$800.00 was payable on the first day of each month.

The tenant testified that they moved out of the rental unit on December 15, 2019, after receiving the Two Month Notice, pursuant to section 49 of the Act, which the parties had agreed at a previous hearing that the effective date September 30, 2019, to December 15, 2019.

The tenant provided a copy of the Two Month Notice in evidence. The reason for ending the tenancy within the Two Month Notice is:

Reason for this Two Month Notice to End Tenancy (check the box that applies)	
<input checked="checked" type="checkbox"/>	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).
<input type="checkbox"/>	The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
<input type="checkbox"/>	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.
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit.

The tenant testified that the at a previous that the landlord had indicated they were not living in the rental unit. The tenant stated that the landlord has a pattern of evicting tenants and not moving into the rental unit.

The landlord's agent testified that the landlord owns many manufactured homes on the property and rents them to tenants under the Residential Tenancy Act. The agent stated that the landlord also was residing in the manufactured home on site "H".

The landlord's agent testified that the landlord had a stroke, and the manufactured home that they lived in needed extensive work and at the time landlord did not have the funds to make the repairs. The agent stated that the landlord issued the Two Month Notice as there were moving into the rental unit on site "G" subject to this hearing. The agent stated the landlord moved into the home on site "G" on December 17, 2019, and remained there until May 9, 2020, when they had to vacate the premises as their bed had gone through the floor. The agent stated that it was determined at that time that the floor was not structurally safe, and the landlord had to move back into his original unit at site "H".

Filed in evidence are photographs of the floor and a hydro account showing the utility was transferred to the landlord on December 16, 2019.

The tenant argued that the photograph of the floor that is showing a hole, was there at the start of their tenancy and the landlord told them to just put a piece of plywood down. The tenant stated that other than that one area of the floor there were no other areas of concern.

The tenant submits that the hydro account in the landlord's name proves nothing as this is automatically transferred into the landlord's name when a tenant moves out, which they did on December 15, 2019. The tenant stated the hydro had to remain on or the pipes would freeze.

Analysis

Section 51 (2) of the Act provides:

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.

[my emphasis]

(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.

Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property. The Guideline provides that a landlord cannot end a tenancy to occupy the rental unit, and then substitute another purpose.

The Guideline provides 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 Guideline provides that 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.

Based on all of the above, the evidence and testimony from the tenant and landlord, and on a balance of probabilities, I find as follows:

The onus is on the landlord to prove they used the rental unit for the reason stated within the Two Month Notice.

In this case, the landlord lived on site “H” in a manufactured home and gave the Notice to site “G” that they would be moving into the manufactured home owned by the landlord, as the manufacture home on site “H” was unsafe.

The only documentary evidence to support residency of the landlord on site “G” was the hydro account being put into the landlord’s name on December 16, 2019. I accept the evidence of the tenant that this is standard practice that when a tenant vacates the property that the hydro account will temporarily be transferred back into the owner’s name to ensure no loss of services. This alone does not prove the landlord was living or even occupying the premises.

I have further reviewed in-depth the hydro account usage, which was provided by the landlord for the time period of January 2020 to March 2022, and the billing period is approximately every 60 days.

The usage shows as follows:

Move-In:				Dec 16, 2019				Move-Out:				Mar 27, 2022				EPP:			No	
READ DATE	DAYS	RATE	EST	ENERGY (kWh)				REVENUE(\$)			¢/kWh	TAXES			OTHER CHARGES	TOTAL CHARGES				
				STEP 1	STEP 2	TOTAL	DAILY AVG.	STEP 1	STEP 2	TOTAL		GST/HST	PST/REC	TOTAL						
2022																				
27Mar22	9	1101	N	200	286	486	54	18.78	40.27	60.92	12.53	3.05	0.00	3.05	0.00	63.97				
18Mar22	59	1101	N	1,309	1,050	2,359	40	122.92	147.84	283.01	12.00	14.15	0.00	14.15	0.00	297.16				
18Jan22	61	1101	N	1,354	1,199	2,553	42	127.14	168.82	308.63	12.09	15.43	0.00	15.43	0.00	324.06				
	129			2,863	2,535	5,398	42	268.84	356.93	652.56	12.09	32.63	0.00	32.63	0.00	685.19				
2021																				
18Nov21	62	1101	N	1,376	1,864	3,240	52	129.21	262.45	404.54	12.49	20.23	0.00	20.23	0.00	424.77				
17Sep21	60	1101	N	1,332	1,375	2,707	45	125.07	193.60	331.13	12.23	16.56	0.00	16.56	0.00	347.69				
19Jul21	62	1101	N	1,376	1,324	2,700	44	129.48	186.68	329.06	12.19	16.46	0.00	16.46	0.06	345.58				
18May21	61	1101	N	1,353	1,690	3,043	50	127.00	237.71	377.36	12.40	18.88	0.00	18.88	0.26	396.50				
18Mar21	59	1101	N	1,309	2,669	3,978	67	121.74	372.06	505.93	12.72	25.31	0.00	25.31	0.25	531.49				
18Jan21	62	1101	N	1,376	1,461	2,837	46	127.97	203.66	344.38	12.14	17.23	0.00	17.23	0.27	361.88				
	366			8,122	10,383	18,505	51	760.47	1,456.16	2,292.40	12.39	114.67	0.00	114.67	0.84	2,407.91				
2020																				
17Nov20	62	1101	N	1,376	815	2,191	35	128.66	114.34	255.83	11.68	12.81	0.00	12.81	0.27	268.91				
16Sep20	62	1101	N	918		918	15	85.83	0.00	98.66	10.75	4.95	0.00	4.95	0.27	103.88				
16Jul20	62	1101	N	1,003		1,003	16	93.78	0.00	106.61	10.63	5.34	0.00	5.34	0.27	112.22				
15May20	58	1101	N	1,044		1,044	18	97.85	0.00	109.88	10.52	5.51	0.00	5.51	0.25	115.64				
18Mar20	61	1101	N	310		310	5	29.30	0.00	42.05	13.56	2.12	0.00	2.12	0.26	44.43				
17Jan20	33	1101	N	89		89	3	8.41	0.00	15.10	16.97	0.76	0.00	0.76	0.14	16.00				
	338			4,740	815	5,555	16	443.83	114.34	628.13	11.31	31.49	0.00	31.49	1.46	661.08				

In this case, the evidence of the landlord’s agent was that the landlord was living in the rental unit from December 17, 2019, to May 9, 2020. However, I find that highly unlikely based on the hydro usage.

The usage from December 16, 2019, to January 17, 2020, a 33-day period the daily average of energy consumed was **3 kWh**. The March 18, 2020, reading a period of 61 days period the daily average of energy consumed was **5 kWh**; and the May 15, 2020, reading a period of 58 days period the daily average of energy consumed was **18 kWh**.

The usage for the same time period in 2021 and 2022 the lowest daily average was **40 kWh**, and the highest daily average was **67 kWh**. While I accept a difference can occur; however, a difference of average daily use of 3kWh in January 2020 vs 46kWh in January 2021, is significant. I find the only reasonable explanation for such a significant difference was that the rental unit was not lived in during the time period and this is consistent when comparing the March and May readings.

Further, I have no other evidence from the landlord to support they were living in the rental unit, such as photographs showing their belongings were there, or other utility invoices being transferred from site "H" to site "G", such a cablevision or a communication landline (telephone) or internet service to support the landlord's position.

I find the landlord has not met the burden of proof. Therefore, I find the landlord must pay the tenants 12 x the month rent.

While the Act requires me to consider if there were extenuating circumstances that prevented the landlord from using the premises for the reasons stated within the Notice for at least six months. However, it is in my opinion that that I need not consider this as I do not believe the landlord was living in the rental unit as claimed for any portion of this time.

I grant the tenant a monetary order in the amount of **\$9,700.00**, this is 12 x the month rent of \$800.00 and the \$100.00 the tenant paid to recover the cost of the filing fee. This monetary order may be filed in a court of competent jurisdiction and enforced as an order of that court. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for compensation related to a Two Month Notice is granted. The tenant is granted a monetary order in the above noted amount.

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: June 29, 2022

Residential Tenancy Branch