Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

The former Tenants (hereinafter the "Tenant") filed an Application for Dispute Resolution on November 15, 2021. They are seeking compensation related to the Landlord ending the tenancy.

The matter proceeded by hearing on June 16, 2022 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

At the outset of the hearing, each party confirmed their receipt of the other's prepared evidence package. On this confirmation, I proceeded with the hearing as scheduled.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the Landlord ending the tenancy, pursuant to s. 51 of the *Act*?

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

Background and Evidence

The Tenant provided a copy of the tenancy agreement they signed at the start of the tenancy on September 29, 20216. The start of tenancy was October 1, 2016. The rent started at $1,500 and remained at that set amount throughout the tenancy.

The Tenant submitted evidence that the Landlord sold the property in June 2021. The Tenant submitted via their Application that the Landlord ended the tenancy for their own use. In the hearing the Tenant confirmed that the Landlord issued a Two Month Notice to End Tenancy for Landlord's Use (the "Two-Month Notice") on March 22, 2021. This was delivered in person to the Tenant, and they did not challenge the Landlord issuing that notice via the dispute resolution process. The scheduled end-of-tenancy date, and the Tenant's own move out from the unit took place by May 31, 2021.

The Landlord did not object to the Tenant's account of the Two-Month Notice and the final move-out date. The Landlord stated that one of the Landlord's family members – specifically, their brother whom the Landlord described as a "50% owner" – had sold their own house and had nowhere to go. After the Tenant here moved out, the Landlord went to move in and "it wasn't acceptable." More specifically, the rental unit itself was "not livable", chiefly because of a persistent odour.

The Tenant stated they remained good friends with their neighbours, and these neighbours frequently pass by the property and notice that the rental unit itself has not been occupied since the end of this tenancy. One specific neighbour confirmed to the Tenant that the rental unit was still vacant, this by November 2021, and even one year later prior to this hearing. As further evidence the Tenant pointed to a "big steel box" that remained in the front yard after one year, specifically "12 months and 1 week". Also, there has been no yard maintenance and the Tenant sent photos showing no clean up of leaves that gathered on the property. They also noted eavestroughs falling off the building structure, with the gutters containing material that is now "3 feet high".

Specifically, the neighbour who provided a letter on the Tenant's behalf had made their inquiry to the Landlord, with the Landlord replying to that neighbour that they were moving in. That neighbour provided a letter dated November 2 2021, and again a letter in June 2022 stating that the rental unit is not occupied.

The Landlord responded to the Tenant's testimony and their presented evidence to say that they have been super busy and just have not had time to renovate the property prior to moving in. They maintained that they still had plans to move into the rental unit. The box in the front yard does contain the family member/co-owner's personal items.

In a written response prepared for this hearing, the Landlord stated "The house needs remediation work or a renovation to bring back to an occupiable state. We are self employed in the construction industry and this present construction boom has not allowed us the time to renovate the house to bring it back to an occupiable state." The Landlord also listed their gestures of goodwill to the Tenant; this includes covering an outstanding utility amount,

clearing rubbish left behind by the Tenant, and no claim against the security deposit at the end of the tenancy.

In the hearing, the Landlord reiterated that the rental unit is not "abandoned" and they visit periodically to cut the grass.

Analysis

Under s. 49 of the *Act* a Landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. There is compensation awarded in certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 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 . . .an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
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> (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.
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> (3) The director may excuse the Landlord or, if applicable, the purchaser who asked the Landlord to give the notice from paying . . .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.

The onus is on a landlord to prove they accomplished the purpose for ending the tenancy. If this is not established, the amount of compensation is 12 times the monthly rent. A landlord may only be excused from these requirements in extenuating circumstances. This is not a question of a landlord's "good faith" in issuing the Two-Month Notice -- that question is the proper focus when a Tenant applies to challenge the actual end of the tenancy and the Tenant did not do that here.

In this present hearing, I find the Landlord did not accomplish the stated purpose for ending the tenancy. The evidence shows they did not use the rental unit for the reason indicated for at least 6 months' duration. I give weight to the neighbour's evidence in the record. As shown in the photos, they were in very close proximity to the rental property to observe if it was properly occupied. From this evidence, I find as fact the Landlord at no time occupied the rental unit after the Tenant vacated. This means they failed to use the rental unit for the stated purpose as set out in s. 51(2).

The Landlord here submits that their plans were scuttled when they could not move in due to the issues with the home needing renovations. There was nothing to prevent the Landlord from assessing the condition of the rental unit prior to issuing the Two-Month Notice.

The *Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy* gives a statement of the policy intent of the legislation. This describes exceptional circumstances as "matters that could not be anticipated or were outside a reasonable owner's control." Applying this to the current situation involving this end of tenancy, I find the Landlord was aware that the home was older and did not assess the state of the rental unit prior to issuing the 2M. As well, I find getting busy with their construction work does not constitute extenuating circumstances.

The placement of a storage box containing a party's personal possessions on the front lawn may indicate some plan to use the unit for the stated purpose; however, it is not proof positive of the conditions that must be in place as per s. 51.

With no extenuating circumstances presented, I find there is nothing precluding my finding that this is a situation where s. 51(2) applies. For this, the Landlord must pay the equivalent of 12 times the monthly rent payable under the tenancy agreement. This is the amount of $18,000 as claimed by the Tenant.

Conclusion

I order the Landlord to pay the Tenant the amount of $18,000. I grant the Tenant a monetary order for this amount. Should the Landlord fail to comply with this Order after the Tenant serves it to them, the Tenant may file this monetary order in the Provincial Court (Small Claims) where it may be enforced as an order of that court.

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: June 30, 2022

Residential Tenancy Branch