Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

The tenant and the landlord's representative PP attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order in an amount equivalent to twelve times the monthly rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent."

Both parties agreed the tenancy started in October 2014 and ended on March 02, 2021. Monthly rent was $2,500.00, due on the first day of the month. The tenant authorized the landlord to retain $300.00 from the security deposit and the landlord returned the balance of the security deposit. The tenancy agreement was submitted into evidence.

Both parties agreed the landlord served and the tenant received a Two Month Notice to End Tenancy for Landlord's Use (the Notice). The landlord submitted a copy of the November 16, 2020 Notice into evidence. It states that the landlord's child will occupy the rental unit. The effective date was January 31, 2021. PP affirmed she is the daughter of the landlord, and the landlord served the Notice for her to occupy the rental unit.

The tenant disputed the Notice, and the parties attended a hearing at the Residential Tenancy Branch on February 22, 2021 (the previous file number is recorded on the cover page). Both parties confirmed they received the previous file decision. It states:

> The settlement agreement comprises an agreement between the parties that the tenancy will end on Monday, March 1, 2021 at 6:00 PM.
> […]
> Finally, I note and confirm that the tenant is entitled to an amount of compensation equivalent of one month's rent, pursuant to section 51(1) of the Act. Further, the tenant reserves the right to seek compensation pursuant to section 51(2) of the Act if it should become necessary to do so.

The tenant claims compensation in the amount of $30,000.00 (12 months of monthly rent payment of $2,500.00).

PP stated the tenant moved out on March 02, 2021, she moved in on the same date and occupied the rental unit until September 2021. I asked PP which day in September she moved out: "I think it was September 10, 2021".

PP testified that her father had to move to another country because of his work and PP mother's had to move with PP to the rental unit and her two younger daughters. PP said that the 2 bedroom rental unit is not large enough for 2 adults and 2 children and they decided to sell the rental unit and move to a bigger property.

The landlord submitted a written statement:

> In the summer of 2021, my husband's work situation changed and he had to go to [redacted for privacy]. Therefore I had not choice but to move into the unit with PP with my other two twin daughters in the apartment. So after a few months we realizes this place was too small for the four of us and we asked out agent [redacted for privacy] to help us and sell the property. The property was then sold on September 21, 2021, nearly 7 months after the tenant had moved out.

PP affirmed the landlord contacted a real estate agent at the end of August 2021 to list the rental unit. PP and her family moved out on September 10, 2021, because potential buyers were visiting the rental unit. The rental unit was sold on September 21, 2021.

The landlord submitted into evidence a letter signed by the real estate agent MM:

> I, MM, confirm that in Summer of 2021, [the landlord] asked me to begin the process of selling her apartment. The apartment was sold on September 21, 2021. I've included a conveyancing letter showing that the property tile transfer occurred on September 21st 2021.

The landlord submitted a letter dated September 21, 2021: "We are pleased to advise that on September 21, 2021 transfer documentation was accepted for registration in the Land Title Office under filing CA…"

The landlord submitted a letter signed by property manager KC on May 5th, 2022:

> I then subsequently transferred the keys to the daughter of the registered owner in person and connected them with vendors to do repairs and cleanup to the unit and can attest to witnessing the daughter of the registered owner having deliveries made and booking a move-ins into the unit. **My duties to this property terminated in mid-March of 2021.**
> Having dealt with [tenant] throughout the years, I can attest that he grew a personal vendetta against the registered owner towards the end of his tenancy. I have no reason to believe the registered owner did not use the property for the intended purpose as

> they were fully aware of the consequences and provided a statement under oath at the initial arbitration hearing.
> **I will make myself available on the hearing date set for 1:30PM June 21st 2022, should the arbitrator require to verify any of the above.**
>
> (emphasis added)

The tenant stated that in August 2020 the landlord asked him to move out because the landlord planned to renovate and list the rental unit for sale. The tenant testified the landlord listed the rental unit from August to November 2020 but he was not able to sell it. The tenant said that in the prior file hearing PP and the landlord's wife guaranteed they would move in and the tenant agreed to move out on March 01, 2021.

The tenant affirmed that PP did not occupy the rental unit. The tenant asked all the concierges of the rental building and they all confirmed to him that PP did not move to the rental unit and did not pay the move-in fee and that the rental unit was renovated between April and June 2021.

The tenant submitted the listing of the rental unit printed on June 01, 2022. It states the unit was listed on November 12, 2020, listed again on July 07, 2021 and sold on August 11, 2021.

The tenant submitted a second listing document indicating the rental unit was sold on August 11, 2021. Both listings provide the same MLS listing number (R****228).

The tenant submitted the BC Assessment for the rental unit in 2021. It indicates the rental unit was sold on August 10, 2021.

I asked PP to address the two listing documents submitted by the tenant. PP stated that the family wanted to list the rental unit for sale and the tenant was not cooperating with the sale of the rental unit in 2020.

I asked PP to specifically address the listings that indicate the rental unit was listed on July 07, 2021. PP testified that she did not know that the place was listed in July 2021. PP said she can provide further documents to prove that she occupied the rental unit.

Analysis

Rule 6.6 of the Residential Tenancy Branch (RTB) Rules of Procedure states that 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.

Per section 51(2) of the Act, the onus to prove the case is on the landlord.

Sections 49(2) and (3) of the Act state:

> (2)Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy
>
> (a)for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
>
> (i)not earlier than 2 months after the date the tenant receives the notice,
>
> (ii)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
>
> (iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
>
> […]
>
> (3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

RTB Policy Guideline 50 states:

> A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:
>
> • accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
>
> • used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).

Based on the prior file settlement, I find the parties agreed to amend the effective date of Notice to March 01, 2021. Per section 51(2) of the Act, PP must have occupied the rental unit from March 02 to September 01, 2021.

RTB Policy Guideline 2A states:

> 6-month occupancy requirement
> The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).
> […]
> E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE
> If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:
> • taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
> • used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice
> the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

I find that PP's testimony was vague and non-convincing. I find the tenant's testimony was detailed and convincing.

I find the letter signed by real estate agent MM is vague, as it states the landlord contacted MM in the "summer of 2021".

I find the letter dated September 21, 2021 does not prove that PP occupied the rental unit from March 02 to September 01, 2021, as PP could have occupied the rental unit regardless if the rental unit was listed for sale or not.

I find the letter signed by property manager KC on May 05, 2021 does not prove that PP occupied the rental unit from March 02 to September 01, 2021, as KC indicates that his duties to the rental unit ended in mid-March 2021. Furthermore, KC did not attend the hearing.

The two listings submitted by the tenant indicate the rental unit was sold on August 11, 2021 and the BB assessment indicates the rental unit was sold on August 10, 2021. I asked PP twice to address these documents and she provided non-relevant testimony.

PP admitted that the landlord listed the rental unit in 2020 after the tenant testified about this fact.

Per Rule of Procedure 3.15, the respondent landlord had to submit and serve all her response evidence not less than seven days before the hearing.

I find that PP's vague and non-convincing testimony, the landlord's written submission and the other documents submitted by the landlord do not outweigh the tenant's detailed and convincing testimony and the documents submitted by the tenant.

Based on the above, I find the landlord failed to prove, on a balance of probabilities, that PP occupied the rental unit from March 02 to September 01, 2021, or that PP ever occupied the rental unit. I find the landlord served the Notice with ulterior motives.

As such, per section 51(2) of the Act, the tenant is entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenant a monetary award in the amount of $30,000.00 (12 x $2,500.00).

As the tenant was successful, I authorize the tenant to recover the filing fee in the amount of $100.00.

In summary, the tenant is entitled to a monetary award in the amount of $30,100.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenant a monetary award in the amount of $30,100.00.

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 23, 2022

Residential Tenancy Branch