



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDC, FF

Introduction

This teleconference hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on October 25, 2021 for compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice), compensation for a monetary loss or other money owed, and recovery of the cost of the filing fee.

The parties listed on the style of cause page of this Decision attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited.

The parties confirmed receipt of the other's evidence in advance of the hearing.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlords in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?

Is the tenant entitled to compensation equivalent to the monthly rent due to a settled agreement between the parties?

Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

This tenancy began in November 2013, and according to the tenant's written submissions, the tenant vacated the rental unit on or about January 4, 2021. At the hearing, the tenant stated he vacated at the end of December 2020.

On April 2, 2019, the parties entered into another fixed-term tenancy until June 30, 2020. At the end of the fixed-term, the landlords sought an order of possession of the rental unit based upon that written tenancy agreement through dispute resolution, with a hearing held on August 24, 2020. The landlords' position was that the written tenancy agreement required the tenant to vacate at the end of the fixed-term and he failed to do so. The tenant's position was that he was not required to do so as he put the word, "No", in the box in the written tenancy agreement addressing the requirement to vacate.

The result of that hearing was a Decision of August 24, 2020, of another arbitrator recording the settled agreement of the parties.

The terms of the settlement are as follows:

During this hearing, the parties reached an agreement to settle their dispute on the following terms:

1. *The tenant agreed to move out by 1:00 pm January 31, 2021.*

2. *The landlord agreed to allow the tenancy to continue until 1:00 pm January 31, 2021.*
3. *An order of possession will be issued to the landlord effective this date.*
4. *The landlord agreed to allow the tenant to occupy the unit rent free in January 2021.*
5. *The landlord agreed that since this tenancy was ending for the landlord's use of property, the tenant is entitled to compensation pursuant to a s.49 notice which includes compensation pursuant to s.51 of the Residential Tenancy Act.*
6. *Both parties stated that they understood and agreed that these particulars comprise the full and final settlement of all aspects of this dispute.*
7. *The parties agreed to exercise any additional goodwill and spirit of cooperation necessary in regard to the above undertakings, which might be required to achieve a positive end to this landlord – tenant relationship.*

The monthly rent at the end of the tenancy was \$2,750.

The tenant's monetary claim is a total of \$35,850, comprised of \$33,000 as compensation related to a Notice to End Tenancy for Landlord's Use of Property, \$2,750 for the equivalent of a month's rent due to a settled agreement, and the filing fee of \$100.

As to the tenant's claim of \$33,000, the tenant in his application wrote the following:

At an RTB hearing on August 24, 2020, the parties entered into a settlement agreement ending tenancy on the basis that a s.49 notice had been delivered by the landlord to the tenant. Landlord did make use of the rental unit for the stated purpose, but rather, listed and sold the property within less than 6 months from the end of tenancy. The tenant seeks a penalty of 12 months rent pursuant to section 51(2) of the Act.

As to his claim of \$2,750, the tenant in his application wrote the following:

At an RTB hearing on August 24, 2020, the parties entered into an agreement ending tenancy on the basis that a s.49 notice had been delivered by the landlord to the tenant. The landlord failed to provide one month's rent pursuant to section 51(1) of the Act.

The tenant's claim is based upon monetary compensation tenants are entitled to when receiving a Two Month Notice to End Tenancy for Landlord's Use of Property, under section 51(1) and (2). The tenant submitted that the rental unit was not used for the stated purpose as the landlords' parents did not move into the rental unit and the rental unit was sold on May 29, 2021.

Submissions of landlords' legal counsel –

The landlord's legal counsel proceeded first in the hearing, providing oral submissions and referring to written submissions.

In their written submissions, landlords' legal counsel wrote that the parties entered into a tenancy agreement for a twelve month fixed-term from November 1, 2013 to October 31, 2014 and over the years, the parties entered into various fixed-term tenancies, as shown by a prior RTB Decision dated July 8, 2020. Counsel submitted further that the parties signed a fixed-term tenancy agreement for a period of 15 months on April 1, 2019 to expire on June 30, 2020. Counsel submitted that at the end of the tenancy agreement, the parties checked and initialed that the tenant must move out of the rental unit at the end of the fixed-term. As the tenant refused to move out, the landlords filed for an order of possession of the rental unit once the Ministerial Order No. M195 repealing MO 89/2020 was issued. That RTB dispute was heard on August 24, 2020, at which time the parties reached a settlement agreement that the fixed-term tenancy was mutually agreed to extend to January 31, 2021.

The written submissions of the landlords' counsel is reproduced as follows, in part:

The Notice to End Tenancy

6. The Tenant had fallen behind on rent payments under the Tenancy Agreement during the period from March 2020 to July of 2020.

Various Emails between Landlords and Tenant - Landlords' Evidence page 145

7. On or about August 27, 2020, the Landlords served the Tenant with a RTB -14 Rent Repayment Plan.

Rent Repayment Plan & Proof of Service - Landlords' Evidence pages 136-138

8. The Tenant acknowledged receipt of the Landlords' RTB 14 Rent Repayment Plan, and acknowledged he remained in rental arrears.

Email from Tenant - Landlords' Evidence page 145

9. The Tenant failed to pay the \$700 installment payment due on October 1, 2020 under the RTB 14 Rent Repayment Plan.

Various Emails between Landlords and Tenant - Landlords' Evidence page 142-145

10. On or about October 8, 2020 Landlords served the Tenant with a 10 Day Notice to End Tenancy (the "Notice") due to the Tenant's failure to pay the rent repayment plan installment due on October 1, 2020.

Various Emails between Landlords and Tenant - Landlords' Evidence page 149

10 Day Notice to End Tenancy & Proof of Service - Landlords' Evidence pages 26-31

11. The Tenant did not pay any rent for the months of November 2020, December 2020 or for January 2021.

Various Emails between Landlords and Tenant – Landlords' Evidence page 155

12. On January 4, 2021, the Landlords were notified by their legal counsel by email that the Tenant had delivered one of a set of four keys to the lawyer's office.

Email January 4, 2021 - Landlords' Evidence page 156

13. The Landlords contacted BC Hydro and it was confirmed that the Tenant had removed essential services for the Rental Property on or about December 3, 2020.

14. The Tenant filed a RTB dispute application to contest the Notice, and a RTB hearing was scheduled to be heard on January 7, 2021. The Tenant and his legal counsel did not attend the hearing. At the hearing, the Landlords stated:

- The Tenant had abandoned the rental unit without notice and so an order of possession was no longer required; and
- The Landlords withdrew their application for an order of possession.

RTB Decision January 18, 2021 - Landlords' Evidence page 33

15. The Landlords were granted a monetary order in the amount of \$14,075.00 against the Tenant.

Monetary Order - Landlords' Evidence page 38

[Reproduced as written]

In the written submissions, the landlord's counsel submitted that the tenant is not entitled to his claim as the tenancy was fixed-term, the landlords did not issue the tenant a 2 Month Notice, the parties agreed to extend the fixed-term by way of a mutual settlement, the tenant breached the tenancy and the Act by failing to pay rent due under the repayment plan and the tenancy terminated by the tenant's abandonment.

As to the one month monetary compensation sought by the tenant, the landlord's legal counsel submitted in the Decision of another arbitrator on January 18, 2021, the arbitrator did not reduce the monetary claim of the landlord due to the tenant's abandonment.

Included in the filed evidence of the landlord were various written tenancy agreements, a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice), a legal brief, and past RTB Decisions referred to in written submissions relating to this tenancy.

Tenant and counsel's response -

The tenant's legal counsel responded by providing oral submissions and referring to written submissions.

The tenant's counsel denied that the parties had entered into a binding fixed-term agreement for the final tenancy agreement, as the tenant did not put his initials in the appropriate box in the tenancy agreement, but rather wrote the word, "no", in the box, making the tenancy a month-to-month. Counsel submitted that the January 18, 2021 Decision did not make a finding that the rental unit had been abandoned, and that the tenant just returned the keys to the landlords.

The written submissions of the tenant's counsel is reproduced as follows, in part:

APPLICABLE LAW

11. Section 49 of the RTA allows a landlord to end a tenancy for "landlord's use." Section 51 of the RTA sets out compensation requirements for landlords who end a tenancy for landlord's use.
12. Sections 51 and 51.4 of the RTA also require a landlord to pay further compensation to a tenant if the landlord does not prove that they have accomplished the purpose for which the tenancy was ended within a reasonable period or, in some instances, have not used the rental unit for the stated purpose for at least 6 months. The director may only excuse a landlord from having to pay this further compensation if there were extenuating circumstances.
13. The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Reasonable Period

14. A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.
15. A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

APPLICATION

17. Pursuant to the terms of the Settlement, the tenancy was ended for the landlord's use of Home. The Settlement specifically contemplated that compensation under s.49 and 51 was included in the terms of the Settlement.
18. The Landlord did not make use of the Property for the purpose of landlord's use within a reasonable period, or at all. Rather, the Landlord sold the Home approximately four months after the tenancy ended.

[Reproduced as written]

Included in the filed evidence of the tenant were a written submission, past RTB decisions, past RTB decisions related to this tenancy, and the last written tenancy agreement of the parties.

Testimony of the parties –

In response to my inquiry, the tenant stated that at the hearing on August 24, 2020, in settlement talks, there was only a discussion of one month compensation and the security deposit and pet damage deposit.

The tenant stated that he found alternate housing and vacated the rental unit at the end of December 2020.

In response to my inquiry, the landlords said they never issued the tenant a 2 Month Notice and that it was the arbitrator at the August 24, 2020, hearing who brought up compensation, not the parties.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 51(1) of the Act, a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 49 of the Act provides that a landlord may end a tenancy for landlord's use for multiple reasons listed in this section.

Section 49(7) of the Act requires that a notice under this section must comply with section 52 [*form and content of notice to end tenancy*] of the Act.

In this case, when a landlord seeks to end a tenancy for any of the reasons listed in this section of the Act, the landlord is required to serve a notice which complies with section 52 as to form and content of the notice to end the tenancy.

As to the tenant's claim for compensation, section 51(1) states that a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the notice an amount equivalent to one month's rent payable under the written tenancy agreement.

Section 51(2) provides that if 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 if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

In this case, the undisputed evidence is that the landlords never issued the tenant a 2 Month Notice. The tenant's claim is not based upon the 2 Month Notice, but rather it is based based upon a settled agreement recorded in an RTB Decision of August 24, 2020.

In this case, I find the tenant bears the onus of proving his monetary claim, as there was not a 2 Month Notice issued for which the landlord would normally be required to prove the rental unit was used for the stated purpose listed on the Notice.

Compensation for the equivalent to 12 months' rent –

Having reviewed the August 24, 2020, Decision, I find the wording in the Decision to be vague and unclear as to what the arbitrator meant by compensation pursuant to section 51. I cannot find that the settlement language gave the tenant a right to claim for compensation equivalent to 12 months' rent, due to the tenant confirming that only

compensation of one month's rent was discussed at the hearing. The landlords said it was the arbitrator who brought up monetary compensation, not the parties.

Additionally, a Notice under section 49 of the Act, provides multiple reasons for which a landlord may issue the tenant this Notice. In this case, the settled agreement did not provide particulars as to which of these reasons the tenant could potentially claim, if there was authority at all, which I do not find. I find the settled agreement is left open for interpretation. I therefore find this incomplete, non-specific, and vague language renders this settled agreement not enforceable in this matter as to what the arbitrator meant for the landlord's use of the property and any associated monetary compensation.

I find it important to note that there was no evidence presented that either party filed for a correction or clarification of the August 24, 2020 Decision in order to clear up any confusion or misunderstanding in the Decision.

I therefore find the tenant submitted insufficient evidence to support their monetary claim and I dismiss his monetary claim of \$33,000, without leave to reapply.

Compensation for the equivalent to 1 month's rent –

As to the tenant's claim for compensation equivalent to one month's rent, having reviewed the August 24, 2020, Decision, I find a plain reading of the document shows that terms 4 and 5 are related to the same issue. I find a reasonable interpretation is that the tenant would be allowed to stay in the rental unit until January 31, 2021, the extended date of the end of the tenancy, and not pay rent for that month. I find this would explain more clearly what the arbitrator meant by compensation under section 51 of the Act.

In considering whether the tenant is entitled to this claim, I find the settled agreement allowed the tenant to remain in the rental unit through the end of January 2021, without paying rent for January. Instead, I find the tenant chose to vacate the rental unit prior to the end of January 2021. I find the landlords are not legally responsible under the Act for a choice made by the tenant, when there is insufficient evidence of a breach of the Act or tenancy agreement by the landlords.

Additionally, another arbitrator made a finding in the Decision of January 18, 2021, that the tenant failed to pay the monthly rent owed for November and December 2020, and

January 2021, in addition to past due monthly rent of \$7,000 incurred during the tenancy. The other arbitrator granted the landlords a monetary award of \$15,350.

For this reason, I find the tenant comes into this dispute resolution with unclean hands. The clean hands doctrine states that “those who come to equity must come with clean hands”. This requires the individual seeking equitable relief to establish that his or her past record in a transaction or interaction is clean.

For the reasons listed above, I find the tenant submitted insufficient evidence to prove their monetary claim for the equivalent of the monthly rent and I therefore dismiss the tenant’s monetary claim of \$2,750, without leave to reapply.

As I have dismissed the tenant’s monetary claim, I decline to award him recovery of the filing fee of \$100.

Although the tenant’s counsel submitted two previous RTB decisions as precedents, I am not bound by previous decisions. However, I distinguish those two Decisions from the present dispute as those disputes did include notices to end the tenancies issued by those landlords.

Conclusion

For the above reasons, I dismiss the tenant’s application due to insufficient evidence, without leave to reapply.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 12, 2022

Residential Tenancy Branch