



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDCT, FFT

Introduction

On March 4, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with C.N. attending as an advocate for the Tenant. Both Landlords attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that a Notice of Hearing package was served to each Landlord by registered mail on or around March 10, 2022. As well, she stated that she served her Amendment to the Landlords by mail on March 29, 2022. B.F. confirmed that they received the Notice of Hearing packages and the Amendment. Based on this undisputed testimony, I am satisfied that the Landlords have been duly served the Tenant's Notice of Hearing package and Amendment.

The Tenant then advised that she served her evidence to the Landlords by mail on May 30, 2022. B.F. confirmed that they received this package, that they had reviewed it, and that they were prepared to respond to it. Based on this undisputed testimony, I am

satisfied that the Landlords have been served the Tenant's evidence. As such, this evidence will be accepted and considered when rendering this Decision.

Landlord B.F. advised that they served their evidence to the Tenant, on June 1, 2022, by registered mail, and then served additional evidence on June 7, 2022, by placing it the mailbox of an address they had for the Tenant. The Tenant confirmed that she received the first package of evidence and then initially stated that she did not receive the second package. However, she then confirmed that she likely had 22 pages of evidence from the Landlords, which totalled the number of pages submitted by the Landlords as documentary evidence. As such, I find that the Tenant has been served the Landlords' evidence. Consequently, this evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 15, 2021, as a fixed term tenancy of one year, and that the tenancy ended when the Tenant was forced to give up vacant possession of the rental unit on March 11, 2022. Rent was established at \$1,400.00 per month and was due on the 15th day of each month. A security deposit of \$700.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

After hearing submissions from the parties, the parties also agreed that the Tenant was only renting one specific room on the property. As such, the dispute address has been amended on the Style of Cause of this Decision to reflect this change. In addition, it was determined that Landlords were actually sub-leasing the rental unit, that the Landlords were in a month-to-month tenancy with their landlord, and that they were then sub-leasing the entire property to other tenants, on fixed term tenancies, contrary to Policy Guideline # 19. Landlord R.T. stated that she had written permission from their landlord to do so. The Landlords' own tenancy then ended due to an Order of Possession that was granted to the original landlord of the property, against the Landlords. As a result, this also then ended the Tenant's tenancy.

Given that this tenancy has ended already, I am unable to cancel the Notice. Moreover, it does not even appear as if this type of Notice was ever served by the Landlords onto the Tenant. As such, and as the tenancy has ended, the only issue I will consider is the Tenant's claim for monetary compensation.

The Tenant advised that she was seeking compensation in the amount of **\$233.00** because she was unaware that the Landlords were sub-leasing the property. She testified that she paid rent for the time-period of February 15 to March 14, 2022, in its entirety as per the tenancy agreement. However, she was forcibly evicted by a bailiff on March 11, 2022, due to the Writ of Possession that the Landlords' landlord enforced. She stated that she was not aware of the Landlords sub-leasing situation, and she only discovered this when the Landlords served her with a letter on March 1, 2022, informing her that their own tenancy was over, and thus, so was the Tenant's. She submitted that the Landlords would not return the pro-rated amount of rent that she had paid, and that the tenancy ended due to a reason that was not her fault.

In addition, the Tenant advised that she was seeking compensation in the amount of **\$1,400.00** because the Landlords rented this rental unit contrary to the *Act*, and that she should be entitled to this compensation due to the costs incurred of having to vacate the rental unit unexpectedly prior to the end of her fixed term tenancy, and having to find a new place to live quickly.

B.F. advised that their own tenancy started on May 10, 2018, that they did not live on the property, and that their landlord served them with a Two Month Notice to End Tenancy for Landlord's Use of Property on August 31, 2021. He stated that they disputed the notice unsuccessfully, and their landlord was granted an Order of Possession. Therefore, they issued a letter to the Tenant on March 1, 2022, informing her that her tenancy has ended as a result of this.

Landlord R.T. advised that they had their landlord's permission to sub-let the property and that their tenants were aware of this situation. She confirmed that they were in a month-to-month tenancy, that they never lived on the property, and that they then sub-let rooms to others, on fixed term tenancies. She acknowledged that the Tenant paid a full month of rent from February 15 to March 14, 2022, but the tenancy ended by way of the enforcement of the Writ of Possession on March 11, 2022. She stated that they paid their own landlord until March 15, 2022, and that the reason they were not refunding the Tenant with her pro-rated rent was because their own landlord would not credit them any rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 44 of the *Act* outlines how tenancies end, and subsection (g) indicates that a tenancy agreement may end if it is a sublease agreement.

Furthermore, Policy Guideline # 19 outlines the definition of a sublet. Below are excerpts from this guideline that are pertinent to this file. Specific areas of these excerpts have been bolded for emphasis.

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant.

This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

Unlike assignment, **a sublet is temporary**. In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, **the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter**. The situation with month-to-month (periodic) tenancy agreements is not as clear as the Act does not specifically refer to periodic tenancies, nor does it specifically exclude them. **In the case of a periodic tenancy, there would need to be an agreement that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy.**

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenant's claims, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlords fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

With respect to the Tenant's claim for compensation in the amount of \$233.00 for the pro-rated rent that was owed to her, the consistent and undisputed evidence is that the Landlords were themselves in a month-to-month tenancy, but were then sub-letting the rental unit on a fixed term tenancy for a period of one year with no intention to ever occupy the rental unit after the sub-tenancy was over, which is contrary to the *Act* and the Policy Guideline. Essentially, the Landlords were breaching the *Act*, and also committing to a tenancy to the Tenant for a period of time that they could not guarantee.

As there is no dispute that the Tenant paid the month of rent in full, and that the tenancy ended prior to the month ending as a result of the Landlords' tenancy ending, I am satisfied that the Tenant is owed compensation for the pro-rated amount of rent that was already paid.

I find it important to note that the sole reason R.T. stated for why this pro-rated amount was not returned to the Tenant was because they were still in dispute over monies that they believed were owed to them from their own landlord, and that once they received their money, they would then credit the Tenant. Compounding this issue further, in my view, is that the Landlords admitted that they rented in this manner to many other tenants, as this was part of their business that they operated. Given that operating in this manner is clearly an attempt to contract outside of the *Act*, I am satisfied that the Landlords have likely breached the *Act* on multiple occasions.

Considering that the Landlords acknowledged that they received rent from each of their sub-tenants that far exceeded the actual amount of rent that they owed to their landlord for the entire property, I find this to be a shockingly poor justification for withholding money from people that they have committed long-term tenancies to, which has been determined to be a contravention of the *Act*. Given that the Landlords should have more money from their sub-tenants than what they have actually paid to their landlord, there should have been an excess funds to have refunded the Tenant for this pro-rated rent. As this was not returned to the Tenant, I grant the Tenant a monetary award in the amount of **\$184.11**, which is calculated as \$1,400.00 X 12 months / 365 days X 4 days (March 11 – March 14, 2022).

With respect to the Tenant's claim for compensation in the amount of \$1,400.00, I am satisfied that the Landlords committed to a fixed-term tenancy with the Tenant, but she was then unceremoniously displaced with little warning, prior to the end of that fixed term due to circumstances that the Landlords had with their own month-to-month tenancy.

As the Landlords attempted to circumvent the *Act* by sub-letting contrary to the *Act*, as they then committed to a fixed term tenancy that they could not fulfill, and as this does not appear to be an isolated incident but is one of many similar sub-tenancies that the Landlords elected to engage in to profit over others, I am satisfied that the Landlords clearly breached the *Act* and are negligent for compensation.

As such, I am satisfied that the Tenant suffered a loss as she was put into a position of having to move hastily, prior to the end of her fixed-term tenancy agreement. Ultimately, I grant the Tenant a monetary award in the amount of **\$1,400.00** to satisfy this claim

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenant

Item	Amount
Pro-rated rent	\$184.11
Compensation	\$1,400.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,684.11

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$1,684.11** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 28, 2022

Residential Tenancy Branch