



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page:2

DECISION

Dispute Codes MNETC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on June 13, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

Both parties attended the hearing and provided affirmed testimony. The landlord did not provide any documentary evidence. The tenant stated he sent his notice of dispute resolution proceeding and evidence by registered mail. Proof of mailing was provided. This package was mailed on November 12th 2021, to the Landlord's house, which is at the same address as the subject rental unit. The Landlord confirmed this was and still is his residence. The landlord denied getting any registered mail package from the tenant. The tenant stated this registered mail package was returned as it was not picked up by the Landlord. The landlord stated he obtained the Notice of Dispute Resolution Proceeding from the RTB by e-mail but denies receiving any package from the Tenant. Although the landlord denied getting any registered mail package from the tenant, pursuant to section 90 of the act I find the landlord is deemed to have received the package five days after it was mailed. I find the Tenant sufficiently served the Landlord with his Notice of Dispute Resolution Proceeding and evidence package.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

Both parties agree that monthly rent was \$600.00 per month. The Tenant stated he received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) in May 2021, and moved out on or around July 31, 2021. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- 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).
 - The Landlord or Landlord's spouse

The Tenant stated that after he moved out, he saw an ad posted through Facebook marketplace listing the rental unit as available for rent. The Tenant took a screenshot of this ad listing on or around November 9, 2021. The Tenant also stated he is friends with a neighbour who lives next door, and this individual provided a signed witness statement attesting to the following:

"I have been neighbours with [Tenant] for over 5 years. He lived at [rental unit address] in the cottage on the property. Since [Tenant] moved out, I have not seen anyone living in it or as little as a light on in the evening.

One Tuesday, November 9, I sent [tenant] an add showing the cottage was for rent on Facebook marketplace [link]

Last night November 12, a U-Haul style truck pulled in and the lights were on so I am assuming someone has rented it and is moving in."

The Landlord stated that this property consists of a large house and a small, detached cottage (the subject rental unit.) The Landlord explained that this property was bought by he and his brother, and his wife and his brother's wife are on legal title. The Landlord stated that he lives as a blended family of 10 with his brother and extended family. The Landlord stated that they all moved into the main house, as well as the cottage, and

lived that way for over 7 months, until April 2022, which is when they assert they rented it to new Tenants.

The Landlord stated that they were aware they had to live in the rental unit for at least 6 months, which is what they did. The Landlord acknowledged posting the ad to re-rent the unit sometime in November 2021, but stated that they were just testing the market and were not wanting to re-rent the unit until after 6 months had passed. The Landlord stated that any moving truck that the Tenant or his witness saw in November would likely have been their moving truck, since they were slowly moving their belongings from Alberta.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENVOATIONS AND REPAIRS

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).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

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.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlord to demonstrate that he accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that he have an extenuating circumstance. The Landlord selected the following ground:

- 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).
 - The Landlord or Landlord's spouse

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

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, 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.*

(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.*

In this case, I note the onus is on the Landlord to prove that he accomplished the stated purpose on the Notice, which is that he or his wife would be moving into the property. I note the Landlord stated that he has moved from Alberta, and he and his extended family have moved into the main house as well as the cottage, both of which are on the same property. There is no dispute that the Landlord posted an ad online in November listing the property for rent. Although the Landlord stated they were testing the market, and were not planning on renting the property out for at least 6 months after living there themselves, I note this ad shows the subject rental unit is “available now”. The Tenant asserts that this screenshot was taken on or around November 9, 2021.

The Landlord denies renting the subject rental unit (the cottage) out to anyone prior to April of 2022. However, I note the Landlord has not provided any documentary evidence to support when and if he or his wife actually moved into the cottage. There is also no signed tenancy agreement or documentary evidence showing when the new tenancy started in the cottage, which the Landlord asserts was in April of 2022. The Landlord asserts the cottage was not rented until April 2022, but there is no evidence to support this.

In contrast to the Landlord’s version of events, the Tenant has provided a signed 3rd party witness statement who says he observed a moving truck arrive out front the cottage a matter of days after the ad was posted. After that time, there appeared to be lights on inside the unit, and prior to that there were no lights on.

I have reviewed the testimony and evidence on this matter. I note the onus is on the Landlord to demonstrate that he accomplished the stated purpose on the Notice and did so for at least 6 months, after the effective date of the Notice, unless he has an extenuating circumstance. I do not find the Landlord has sufficiently met the burden of proof on this matter, particularly given the alternative scenario provided by the Tenant and his witness.

As a result, I find it more likely than not that the Landlord breached section 51 of the Act and failed to move in for at least 6 months, which typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that she should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are 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 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*

The Landlord did not speak to any extenuating circumstances. I am not satisfied that there were any “extenuating circumstances”, such that it would be unreasonable or unjust for the Landlord to pay the compensation.

I award the Tenant \$7,200.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$600.00. I also award the \$100.00 filing fee.

Conclusion

I grant the Tenant a monetary order in the amount of \$7,300.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 13, 2022