



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the *Residential Tenancy Act* (the Act), seeking:

- Compensation for monetary loss or other money owed under section 51(2) of the Act; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 PM on June 3, 2022, and was attended by Tenant, who provided affirmed testimony. No one appeared on behalf of the Landlord.

The Tenant was advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Tenant was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Tenant was also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent(s) must be served with a copy of the Application, the Notice of Hearing, and the documentary evidence to be relied on by the applicant at the hearing. The Tenant stated that they sent the Notice of Dispute Resolution Proceeding (NODRP) package to the Landlord by registered mail on October 29, 2021, and provided me with the registered mail tracking number, which is recorded on the cover page of this decision. The Tenant stated that the Canada Post

tracking system shows that the registered mail was never picked up or delivered and that it was returned to them in either December 2021 or January 2022. The Tenant stated that they lived in a basement suite in the same residence as the Landlord and as such, they are familiar with the Landlord's address. Further to this, the Tenant stated that the same address for the Landlord listed on the Two Month Notice to End Tenancy for Landlord's Use of Property, was used to send the registered mail. The Tenant believed that the Landlord was intentionally avoiding receipt.

Residential Tenancy Policy Guideline (Policy Guideline) #12 states that deemed receipt provisions are generally used in the absence of evidence of the date documents were actually received, such as when a respondent has not filed a dispute or appeared at a dispute resolution hearing, which is the case here. It also states that where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing. Records at the Branch indicate that the NODRP was emailed to the Tenant on October 27, 2022, and as there is no evidence before me to the contrary and based on the Canada Post tracking information relayed to me by the Tenant at the hearing, I am satisfied on the balance of probabilities that a package containing the NODRP and the documentary evidence before me from the Tenant was sent to the Landlord by registered mail on October 29, 2021.

Based on the affirmed testimony of the Tenant that the address used for the Landlord on the registered mail was correct, the fact that this address was listed as the Landlord's address on the Two Month Notice in the documentary evidence before me which forms the basis for this dispute, and in the absence of any evidence to the contrary, I find that the address used for the registered mail was an address at which the Landlord resided at the time of mailing. Although the registered mail was not accepted or picked up by the Landlord, pursuant to Policy Guideline #12 and sections 88, 89, and 90 of the *Act*, I find that the Landlord was deemed served for the purposes of section 59 of the *Act* and rules 3.1 and 3.14 of the Rules of Procedure, on November 3, 2021, five days after they were sent by registered mail. The hearing therefore proceeded as scheduled, despite the absence of the Landlord, pursuant to rules 7.1 and 7.3 of the Rules of Procedure and the documentary evidence before me was accepted for consideration.

Although I have turned my mind to all of the evidence and testimony before me for consideration, I refer only to the relevant and determinative, facts, evidence, and issues in this decision. At the request of the Tenant, a copy of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application and confirmed in the hearing.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed under section 51(2) of the *Act*?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

Although a written tenancy agreement was not submitted for my review and consideration, the Tenant stated that one exists. The Tenant stated that they moved into the rental unit in November of 2013, and at that time, rent in the amount of \$1,100.00 was due on the first day of each month and included cable and internet. The Tenant stated that approximately one year into the tenancy, their rent was reduced by \$50.00 per month as the Landlord was no longer providing cable and internet as part of their rent. The Tenant stated that during the course of the tenancy the rent was increased to \$1,100.00, which is the monthly rent amount payable at the time the tenancy ended on August 31, 2021, as the result of a Two Month Notice.

The Tenant stated that they were personally served with the Two Month Notice on June 30, 2021, and provided me with a copy of the Two Month Notice for consideration. The Two Month Notice is on the 2021 version of the form, is signed and dated June 30, 2021, has an effective date of August 31, 2021, and states that the tenancy is being ended as the unit will be occupied by the Landlord or their close family member. The Tenant stated that they accepted the Two Month Notice and moved out in compliance with it, as they believed the Landlord was acting in good faith as the Landlord had advised them that their father-in-law and mother-in-law would be moving into the home with them.

The Tenant stated that they finally found a new place at 7:00 PM on August 31, 2021, at an increased rent amount of \$2,200.00 plus utilities, as the rental market is very tough. The Tenant stated that they moved out but became suspicious that the Landlord may

not use the rental unit for the stated purpose when they advised them that they might sell their parents house and all move into a new home. As a result, the Tenant stated that they kept looking at rental listings online after they moved out and on September 9, 2021, they saw the entire home in which the rental unit was located, listed for rent at a price of \$4,200.00. The Tenant stated that on September 24, 2021, they saw an advertisement for their previous rental unit at \$1,700.00 per month, and that it looked as though some renovations had been completed to the suite since they moved out.

The Tenant stated that although they received one month compensation pursuant to section 51(1) of the *Act*, they are seeking \$13,200.00 in compensation, which represents 12 times their monthly rent, pursuant to section 51(2) of the *Act*, and recovery of the \$100.00 filing fee, as they state that the Landlord did not use the rental unit for the purpose stated in the Two Month Notice.

Although the teleconference remained open for the 39-minute duration of the hearing, no one called into the hearing on behalf of the Landlord to provide any evidence or testimony for my consideration.

Analysis

Based on the documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the *Act* applies existed between the parties and that rent in the amount of \$1,100.00 was due each month under the tenancy agreement at the time the tenancy ended. I am satisfied that the Tenant was served with a Two Month Notice pursuant to section 49(3) of the *Act*, and that the tenancy ended as a result of the Two Month Notice on August 31, 2021. I am also satisfied that the Tenant received the required compensation set out under section 51(1) of the *Act*.

Section 51(2) of the *Act* states that 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 the landlord or purchaser, as applicable, does not establish that:

- the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 51(3) of the *Act* states that 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 applicable, from:

- accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Landlord did not appear at the hearing to discharge the burden of proof incumbent upon them under section 51(2) of the *Act* and the Tenant provided affirmed and uncontested testimony and documentary evidence, such as copies of advertisements showing the house and/or rental unit for rent, that the rental unit was not used for the stated purpose set out in the Two Month Notice. I therefore find that it was not, and as the Landlord did not appear and present any arguments that extenuating circumstances under section 51(3) of the *Act* apply, I find that section 51(3) of the *Act* does not apply. I therefore grant the Tenant \$13,200.00 in compensation, which represents 12 times the monthly rent of \$1,100.00, pursuant to section 51(1.2)(2) of the *Act*. As the Tenant was successful in their Application, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **\$13,300.00**, and I order the Landlord to pay this amount to the Tenant.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **\$12,940.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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 has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a

result, I find that neither the validity of this decision and the associated order, nor my authority to render them, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

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: July 21, 2022

Residential Tenancy Branch