Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) and recovery of the cost of the filing fee.

The tenant and the landlords attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all 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. The parties confirmed receipt of the other's evidence.

I was provided evidence from the parties including: testimony and written submissions, all of which has been reviewed. Not all evidence has been referenced in this Decision. The principal aspects of the tenant's claims and the landlord's responses and my findings around them are set out below.

Further, I have used my discretion under Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 3.6 to decide whether evidence is or is not relevant to the issues identified on the application and decline to consider evidence that I deem is not relevant.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to a monetary order pursuant to section 51 of the Act and recovery of the filing fee?

Background and Evidence

The tenancy began in April 2015 and ended on or about February 28, 2021, according to the tenant. The monthly rent at the end of the tenancy was $1,024.43, according to the tenant.

The rental unit was in the basement level of a home owned and occupied by the landlords on the upper level.

The tenant submitted that the tenancy in the rental unit was her second tenancy there, as she moved away, and then resumed a tenancy in April 2015. The tenant said that there was a written tenancy agreement in place for the first tenancy, but not the second tenancy.

The parties agreed that the landlord issued the tenant a 2 Month Notice, which listed an effective date of January 31, 2021. The Notice was dated December 1, 2020. The reason stated in the Notice was that the rental unit will be occupied by the landlord or the landlord's close family member. Alongside this reason, the landlord made a handwritten note, which said, "Our daughter split up. She is moving back home".

The landlord's daughter will be referred to as "IV" "GV", or "IGV", depending on the context and references. IGV represents the full name.

Filed in evidence was the Notice.

The tenant's monetary claim is $12,293.16, equivalent of 12 times the monthly rent payable under the tenancy agreement, at the end of the tenancy, for receiving the landlord's 2 Month Notice, as it has not been used for the stated purpose listed on the Notice, according to the tenant.

In response to the tenant's claim, the landlord testified that their daughter, IGV, separated from her boyfriend of 7 years and moved back into their home in January 2021. In mid-March, 2021, IV moved downstairs into the rental unit.

In a written statement, the landlords wrote that they gave the tenant the 2 Month Notice as their daughter split up with her boyfriend and moved back home. The landlords indicated on the written statement that IV worked from 8.30 am to 6.00 pm and that she had to work overtime. After that, according to the statement, IV hung out with friends. The landlords wrote that IV parked her car in the garage, listing the colour and make of the vehicle.

The landlords stated that their daughter enrolled in a course in Mexico and described the course as a "Whole Life Couch, ("illegible word*) A WOLF NON SURGICAL MASSAGE".

The landlords wrote that they were informed by IV that she would stay in Mexico, at which time the landlords rented out the rental unit.

"Sheet1" was written at the top of this statement.

The landlord referred to a statement by the best friend, TM, of landlord, CV, filed in evidence. The statement from TM stated that they had known the landlords for 15 years and that they visit every 6 weeks. That statement also said that the landlords' son moved into the rental unit at the beginning of March 2021 and GV moved into the rental suite in the middle of March 2021. The statement described the colour and make of the tenant's son's car and that the landlords' son stayed in the rental unit from March through September 2021, at which time he moved to Mexico as work required. That statement also said the landlords' daughter was accepted into a course in Mexico, which started in October 2021 and described the colour and make of GV's car.

"Sheet1" was written at the top of this statement.

The landlord referred to another written statement from two of their neighbours, filed in evidence. In this statement, the neighbours described the make and colour of IGV's vehicle as well as the landlords' son's vehicle. The neighbours also wrote that the landlords' son went to Mexico with his job, naming the type of business and the name of the business. Directly after this statement, the sentence read, "***Our*** daughter, ("daughter first name, GV") went there as well, to take a course and do some training".

[*Emphasis added*]

Another statement filed by the landlords was a statement from a company. The one-paragraph statement was undated and unsigned. The statement, in part, read, "(*IV* moved into (female landlord name)'s rental suite March 15th and (*JV*) moved in March 1st".

This statement went on to describe in detail where in another country IV and JV moved to due to the company JV worked for moving their operations to the other country and describing JV's job with the company.

The landlord said this statement was sent to the landlords by email.

Additional evidence filed by the landlords included black and white photographs of what was described as their daughter's belongings and documents with IV's name and address. I note this address is the same as the landlords' address, with no designation that the address of IV was in the basement level.

When questioned, CV denied that they advertised the rental unit, and AV said that they had, in November 2021. CV later agreed the rental unit had been advertised in November 2021.

As to the written statements provided by the landlords, CV said that they typed up their own statement, TM typed up their own statement, and the neighbours typed up their own statement.

Tenant's response -

The tenant submitted that she believed that the 2 Month Notice was not about the landlords' daughter moving in, as the landlords always complained about the costs of utilities and the tenant's smoking.

The tenant wrote that when the landlord, AV, handed her the 2 Month Notice on December 1, 2020, he seemed nervous, stating about his daughter moving in, "I don't know, we will see what happens".

The tenant wrote that on January 31, 2021, AV phoned to inquire why the tenant had not vacated, the tenant explained to him that as did not serve the 2 Month Notice by

November 30, 2020, the move-out date was changed to February 28, 2021. The tenant wrote that she asked AV if their daughter was moving in, AV said, “No”.

On February 27, 2021, the tenant asked AV if she could extend her stay by one day, as her next rental was not ready. According to the tenant, AV mentioned their daughter moving in, and when asked by the tenant further, the landlord answered as to whether their daughter was moving in, AV said, “well no but…”

The tenant filed photographs of rental listings, text messages between the parties and a copy of the monthly rent cheque for December 2020, in the amount $1,051.09.

Analysis

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

In the case before me, the undisputed evidence is that the landlord issued the tenant a 2 Two Month Notice to End Tenancy for Landlord’s Use of the Property, pursuant to section 49 of the Act, for a listed effective move-out date of January 31, 2021.
As the 2 Month Notice was delivered to the tenant either on December 1 or 2, 2020, I find the effective date corrected under the Act to February 28, 2021.

The tenant complied with the corrected effective date of the Notice and vacated the rental unit.

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

The 2 Month Notice was given to the tenant listing that the landlord or close family member intended to occupy the rental unit, and in this case, the landlords specified that it would be their daughter who would occupy the rental unit.

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

landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

I found the landlord's evidence to be inconsistent and not credible.

The landlord testified that they wrote their own statement, that their friend, TM, wrote their own statement, and that their neighbours wrote their own statements.

When I review these documents and compare them to the unsigned, undated one paragraph statement on a company letterhead, I find on a balance of probabilities that all 4 statements were in the same font and spacing, which suggests that the statements originated from the same source, in contradiction of the landlord's testimony.

It also does not make sense that two separate documents, if created and written by two separate people, would have the same statement at the top of the page, spaced exactly, "Sheet1".

I also find it does not make sense that a statement from the landlords' neighbours would refer to the tenants' children using their full names instead of a less formal reference to acquaintances.

All statements, apart from the short statement from the company, contained common specific information, as IGV and JV's type and colour of vehicle. As well, the three statements all made reference to IGV's new place of residence and the specific course IGV enrolled.

And finally, in the neighbour's statement, they referred to "our daughter", using the middle name of the landlords' daughter. I find this supports that the landlords wrote this statement, in direct contradiction to the landlords' sworn testimony.

I find it does not make sense that a business would send an unsigned and undated short statement, which made reference to the landlords' two children moving away to the same country and town, and to have personal, and very specific information of when the two children moved into the rental suite. Neither the friend nor neighbours attended the hearing to provide testimony to confirm their statements.

For these reasons, I find it more likely than not that the landlords wrote, or had someone write, all four statements, in direct conflict with their sworn testimony.

I also find the documents submitted by the landlords showing their daughter's name and address were not persuasive. The address was the landlords' address. No correspondence was provided listing the basement unit. Their daughter did not call into the hearing or provide an affidavit of having resided in the rental unit.

The landlord CV also changed her testimony during the hearing.

For these reasons, I find the landlords' evidence to be contradictory and inconsistence and therefore, not credible.

On the basis of the above credibility finding, I afford no weight to the landlords' evidence.

For this reason, I find the landlords submitted insufficient evidence to prove that the rental unit was used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice

I therefore find the tenant has established a monetary claim of 12 times the monthly rent due under the tenancy agreement, or $1,024.43, for a total of $12,293.16.

I note that the tenant submitted evidence that she paid monthly rent in the amount of $1,051.09 in December 2020; however, the tenant submitted at the hearing that the amount claimed was the monthly rent times 12 months.

I find merit with the tenant's application and award her recovery of their filing fee of $100, pursuant to section 72(1) of the Act.

As a result, I grant the tenant a monetary order (Order) of $12,393.16, the equivalent of monthly rent of $1,024.43 for 12 months, or $12,293.16, and the cost of the filing fee of $100.

Should the landlords fail to pay the tenant this amount without delay, the tenant must serve the Order on the landlords for enforcement purposes by means under section 88 of the Act. The landlords are cautioned that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent and recovery of the filing fee is granted. The tenant has been granted a monetary order for $12,393.16.

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: July 20, 2022

Residential Tenancy Branch