



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by registered mail on January 29, 2022 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Hearing Package on February 3, 2022. The Tenant and the Tenant’s agent were given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy under written agreement of an upper floor in a house started on October 1, 2020 on a fixed term to end September 30, 2021. The tenancy agreement requires the Tenant to move out at the end of the fixed term however there is no indication that the Landlord would be moving into the unit at that time. Rent of \$2,500.00 was payable on

the first day of each month. On July 20, 2021 the Landlord tried to increase the rent by \$1,000.00 per month however the Tenant disagreed with the increase and on July 31, 2021 the Landlord served the Tenant with a two month notice to end tenancy for landlord's use dated July 31, 2021 (the "Notice"). The Notice sets out an effective date of September 30, 2021 and the Tenant moved out on that date. The Notice sets out that the Landlord or the Landlord's spouse will occupy the unit. The security deposit has been dealt with.

On January 7, 2022 the Tenant went to the unit and talked with persons in that unit who identified themselves as tenants of the whole house containing the unit. The Tenant provides video of the conversation. The Tenant claims compensation equivalent to 12 months rent of \$30,000.00.

Analysis

Section 51(2) of the Act provides 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

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) 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 provides 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

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(b)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.

Based on the undisputed evidence that the stated purpose of the Notice was for the Landlord or their spouse to occupy the unit and based on the undisputed evidence that the unit was rented to new tenants a little over three months from the effective date of the Notice, I find that the Landlord failed to establish the stated purpose of the Notice and must pay the Tenant the claimed amount of **\$30,000.00**. As there is no evidence of any extenuating circumstances that prevented the occupation of the unit by the Landlord, I find that the Landlord is not excused from paying the Tenant. As the Tenant has been successful with their claim, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$30,100.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$30,100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: August 31, 2022

Residential Tenancy Branch