



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for a Monetary Order of \$15,420.00 as compensation for the Landlord having ended the tenancy and not complied with the Act or used the rental unit for the stated purpose pursuant to section 51(2).

One of the Tenants, DP, attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 1:40 pm in order to enable the Landlord to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that DP and I were the only ones who had called into the hearing.

I advised DP that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Addition of Party

DP confirmed her spouse TP was also a tenant on the tenancy agreement. Accordingly, I added TP as a party to this application pursuant to Rule 7.13 of the Rules of Procedure.

Preliminary Matter – Service of Dispute Resolution Documents

DP testified she served the Landlord with the notice of dispute resolution proceeding package and the Tenants' documentary evidence (collectively, the "NDRP Package") by Xpresspost on December 30, 2021. DP submitted a receipt and a Canada Post

Xpresspost tracking number in support. That Canada Post tracking number is referenced in the cover page of this decision. DP also submitted tracking information which shows that the package was delivered on January 7, 2022. Based on the foregoing, I find the Landlord has been served with the NDRP Package in accordance with sections 88(c) and 89(1)(c) of the Act on January 7, 2022.

Preliminary Matter – Landlord’s Non-attendance

Rule 7.3 of the Rules of Procedure states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Having found the Landlord to be duly served with notice of this hearing, I directed that the hearing be conducted in the absence of the Landlord.

Issue to be Decided

Are the Tenants entitled to a Monetary Order for compensation under section 51(2) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on October 1, 2016 and ended on September 30, 2020. Rent was \$1,285.00 per month. A copy of the tenancy agreement has been submitted into evidence.

The Tenants’ evidence also includes a two month notice to end tenancy dated July 28, 2020 (the “Two Month Notice”). The Two Month Notice is signed by MJ on behalf of the Landlord and has an effective date of October 1, 2020. The Two Month Notice states

that 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).

DP confirmed the Tenants received the Two Month Notice from the Landlord at the end of July 2020 and vacated the rental unit by September 30, 2020.

DP testified that MJ is the Landlord’s son. DP testified that after speaking with their downstairs neighbour who had been living there for some time, the Tenants were certain that the Landlord’s family would not be moving into the rental unit due to the Landlord’s mobility issues.

DP testified that in October 2020, several days after the Tenants moved out, they found an online listing for the rental unit that was advertising the place for \$2,000.00 a month (the “Listing”). DP testified the Tenants took screenshots of the Listing on November 16, 2020. Copies of these screenshots have been submitted into evidence. The screenshots show that the Listing was posted on October 6, 2020, by an individual named M (same first name as MJ). The Listing includes the rental unit address and photographs of the rental unit. The Listing suggests that the rental unit is available from October 15, 2020.

DP testified she went by the rental unit in November 2020 and spoke with the residents. DP testified she asked if the new tenants were related to MJ and whether they had signed a lease. DP testified she was told that the new tenants had moved from a different city and were on a month-to-month tenancy. The Tenants submitted a handwritten note dated November 7, 2020 by an individual named AK. This note states that AK moved into the rental unit on October 21, 2020 and that AK is not related to M (same first name as MJ).

DP testified that she believes that AK continues to live at the rental unit. DP testified that the rental unit has a big window through a white couch can be seen. DP testified that since November 2020, she has driven past the rental unit numerous times and has seen the same white couch, as well as the same patio chairs and the same van parked outside. DP testified that she would have noticed if someone else had moved into the rental unit.

Analysis

Section 51 of the Act states:

Tenant's compensation: section 49 notice

51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

(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 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.

(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 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.

(emphasis added)

In this case, I have reviewed a copy of the Two Month Notice and find that it is a notice to end tenancy under section 49 of the Act. I find that the Two Month Notice meets the form and content requirements of section 52 of the Act.

I further find that the stated purpose of the Two Month Notice was for the Landlord, the Landlord's close family members, or the close family members of the Landlord's spouse to move into the rental unit.

Based on DP's undisputed testimony and the Tenants' documentary evidence, I find on a balance of probabilities that since October 21, 2020, the rental unit has been occupied by a new tenant who is not related to MJ, the Landlord, or their family members. As such, I find the Landlord has neither accomplished the stated purpose of the Two Month Notice nor used the rental unit for the stated purpose for at least 6 months, beginning within a reasonable period after October 1, 2020, the effective date of the notice.

Furthermore, I find there is insufficient evidence of any extenuating circumstances that may have prevented the Landlord from accomplishing the stated purpose of the Two Month Notice.

Accordingly, I conclude that the Tenants are entitled to compensation from the Landlord in the amount of \$15,420.00, or 12 times the monthly rent of \$1,285.00.

Conclusion

Pursuant to 51(2) of the Act, I grant a Monetary Order in the amount of \$15,420.00 to the Tenants. This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court 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: August 17, 2022

Residential Tenancy Branch