



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

On January 3, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the Act.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord on January 18, 2022, which was served late and not in compliance with Rule 3.1 of the Rules of Procedure. The Landlord confirmed that he received this package, and while late, he did not indicate that there was any prejudice to him. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was duly served this package. As such, the Tenant’s evidence will be accepted and considered when rendering this Decision.

The Landlord advised that his evidence was served to the Tenant by registered mail on July 29, 2022, and the Tenant confirmed he received this more than a week before the hearing. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 1, 2010, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on March 31, 2021, after being served the Notice. Rent was established at \$1,357.00 per month and was due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenant's daughter was served with the Notice on January 31, 2021. The reason the Landlord checked off on the Notice was because "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)." As well, the Landlord checked off the box indicating that "The child of the landlord or landlord's spouse" would be occupying the rental unit. The effective end date of the tenancy was noted on the Notice as March 31, 2021.

The Landlord advised that his daughter moved into the rental unit approximately two weeks after the effective date of the Notice. He referenced a signed statement from his daughter, submitted as documentary evidence, where she confirmed that she moved into the rental unit mid-April 2021, and moved out of the rental unit at the end of November 2021. He then referenced two signed letters from immediate neighbours, submitted as documentary evidence, to support his position that his daughter moved into the rental unit as testified.

In addition, he cited the utility bills, submitted as documentary evidence, that were in his daughter's name, and these bills were for the rental unit address over the period of time

that she occupied the rental unit. He advised that these bills were low due to the fact that his daughter lived by herself. He then referred me to two pictures, submitted as documentary evidence, to demonstrate that his daughter was living in the rental unit. He noted that the one picture that the Tenant submitted, as documentary evidence, of an apparent empty rental unit was taken on December 25, 2021, and he already acknowledged that his daughter had moved out prior to that date.

The Tenant advised that it was his belief that the Landlord's daughter did not move into the rental unit after the effective date of the Notice and stay there for at least six months. He stated that he went past the rental unit on many occasions, and that his brother lives on the same road; however, he did not submit any documentary evidence to demonstrate that on all these occasions he visited, that the rental unit was empty. While he indicated that he had substantial evidence to support this position and could submit it after the hearing, it is not clear why he did not submit this for consideration, nor does it make any logical sense that this was not done.

He doubted the Landlord's letters from the neighbours, as they use words like "occupy" and "frequent the house", and he questioned why they would not use more definitive language to state that the daughter did in fact live in the rental unit. As well, he questioned how these neighbours would have known to include specific details in their statements unless directed to by the Landlord, and he suggested that there may have been some sort of "coercion".

He also advised that the limited energy consumption of the utility bills would not support a likelihood that a person could have realistically lived there as it was barely enough to run basic appliances. However, he did not submit any documentary evidence to support his suggested figures and calculations regarding energy consumption, nor did he submit any qualifications to corroborate his ability to reliably report on these claims. Moreover, he questioned the pictures of the Landlord's daughter living in the rental unit as he suggested that there may have been a date photoshopped into it.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52, and I find that it is a valid Notice.

With respect to the Tenant's claim for twelve-months' compensation owed to him as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on January 31, 2021 and Section 51 of the Act changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

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.

I also note that the good faith requirement ended once the Notice was accepted, and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the Act by using the rental unit for the stated purpose for at least six months after the effective end date of the Notice.

Regarding this situation, I find it important to emphasize that Section 51(2)(a) states that the 12 months' compensation is awarded 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." As well, the effective date of the Notice was March 31, 2021.

In addition, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the burden of proof in this type of Application reverts to the Landlord to provide sufficient evidence, over and

above their testimony, to establish that they used the property for the stated purpose for at least six months after the effective date of the Notice.

Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, I have before me three, signed statements indicating that the Landlord's daughter took possession of the rental unit in mid-April 2021, and occupied the rental unit for at least six months. As well, there are copies of utility bills in her name for the rental unit, during the period of time which he claims his daughter lived there. Furthermore, there are pictures submitted that appear as if she occupied the rental unit.

While it is the Tenant's position that the Landlord's daughter did not move in and occupy the rental unit, it was evident that his submissions were primarily based on suggestions and speculation. Given that he had a significant amount of time to submit persuasive documentary evidence corroborating his claims of his frequent visits to the rental unit where he observed the rental unit to be empty, none of this was submitted. Furthermore, his reasoning for not submitting this evidence was not compelling. Rather, in my view, it was evident that either this evidence did not exist, or that the Tenant was not being truthful.

When weighing the evidence of the parties in its totality, I find the Landlord to be a more credible witness than the Tenant. The Landlord provided consistent, logical testimony which was supported with documentary evidence where available. Other than suggestions, the Tenant provided little compelling or reliable testimony, or sufficient documentary evidence, that would outweigh the Landlord's testimony and accompanying supporting documentary evidence to shift the balance of probabilities in his favour. I found that much of the Tenant's testimony to have little to do with the matter at hand, and was more concerned with what the Landlord did to the rental unit. Based on the foregoing, where the evidence of the parties clashed, I found that the Landlord's version to be more credible.

As such, I am satisfied, on a balance of probabilities, that the Landlord's daughter moved into the rental within a reasonable period of time after the effective date of the Notice, and occupied it for a period of at least six months after this date. Consequently, I am satisfied that the Landlord has complied with the *Act*.

Ultimately, I find that the Tenant is not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*. As the Tenant was not successful in his claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

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 12, 2022

Residential Tenancy Branch