



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied on January 14, 2022 for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) and to recover the cost of the filing fee.

The tenants, the tenants' son, and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the 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 landlord confirmed receipt of the tenants' evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

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

Preliminary Issue –

In response to my inquiry, the landlord said he sent his evidence to the tenants by Canada Post mail and had a tracking number. In response to my inquiry, the tenant said they did not receive the landlord's evidence by registered mail. When asked again, the tenant again answered they did not receive the landlord's evidence by registered mail. In response to my next and third inquiry attempting to confirm the tenants' receipt of the landlord's evidence, the tenant then said he received random and unrelated papers from the landlord and only glanced at them. As the landlord was not required to serve evidence by registered mail and only by any method under section 88 of the Act, I find the tenants were served the landlord's evidence.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on June 1, 2018, and the tenants said they vacated the rental unit on November 30, 2021. The monthly rent at the end of the tenancy was \$2,840, according to the tenants on their application. A copy of a written tenancy agreement was filed in evidence. This tenancy agreement was executed during the tenancy, as the tenancy start date was June 1, 2020 for a fixed-term of May 31, 2021. The landlord and the tenants initialed each page and all three signed the tenancy agreement in May 2020.

The tenants were served a 2 Month Notice in person by the landlord on August 31, 2021, with an effective move-out date of November 1, 2021. The Notice was filed in evidence. The landlord in this application was named as landlord, signed by the landlord, dated August 31, 2021, and listed the landlord's address as the downstairs of the residential property.

The reason stated on the Notice was that the rental unit will be occupied by the landlord or the landlord's spouse.

The Notice was the subject of a prior dispute resolution proceeding, in which the tenants disputed the Notice. In a Decision of October 26, 2021, another arbitrator recorded a settlement of the parties, in which the tenants were allowed to extend the tenancy to January 3, 2022, or move-out earlier. The other arbitrator also wrote that the parties agreed “the Landlord is still responsible to fulfill and accomplish the stated purpose on the 2 Month Notice to End Tenancy dated August 2021”.

The tenants’ monetary claim is \$34,080, 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.

The tenants wrote in their application the following:

The Landlord has not taken steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, nor has he used the rental unit for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

The landlord also said he moved in downstairs, when his parent moved upstairs, but all of them were all using the upper and lower parts of the house, as there was access to both.

The landlord said that he is not the landlord and has always acted as agent for his parents, the owners of the residential property. The landlord said that when the tenants moved out, his parents moved upstairs into the rental unit. The landlord filed in evidence utility bills, bank statements, and a 2022 property tax notice, in either his mother or father’s name, listing the residential property address.

The landlord also filed a copy of an addendum to the contract for purchase and sale of the residential property, listing the landlord’s parents as sellers and a possession date of August 16, 2022.

In response, the tenants said they were never informed that the landlord acted as agent for the entire time of the tenancy. The tenants submitted that they only dealt with the landlord and the landlord arranged for and paid for repairs during the tenancy. The tenants said that the landlord is a senior pilot who works for United and owns a home in

the US and lives with his wife there. They said that if the landlord comes to the area, it was only for work purposes.

The tenants said that their neighbours from the residential property told the tenants that the upstairs bedroom blinds were always open and they never saw lights or activity in the upper unit.

The landlord said that they kept the blinds open because they love light and moved upstairs to get more light and that they lived in the home for 8 months, 16 days.

The tenants said the landlord made an “impassioned plea” at the last dispute resolution hearing that he helped to take care of his father. The landlord’s father, however, ran a pizza place on his own.

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 tenants a 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 November 1, 2021.

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 tenants listing that the landlord or close family member intended to occupy the rental unit, and in this case, the landlord specified that the landlord or the landlord’s spouse will 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.

While the tenants disputed the 2 Month Notice by filing an application for dispute resolution, that dispute resulted in a settled agreement between the parties, recorded in a Decision by another arbitrator. The settled agreement was that the “Landlord is still responsible to fulfill and accomplish the stated purpose on the 2 Month Notice to End Tenancy dated August 2021”.

I interpret this to mean that the landlord in this case is the same landlord who agreed to be responsible to fulfill the stated purpose.

The landlord here was listed as the landlord in that dispute and the settlement was between the tenants and the landlord. Nothing was mentioned that the settlement was between the tenants and the landlord's father. When the landlord agreed to this settlement, he became bound by the terms.

I cannot re-hear and change or vary a matter already decided upon as I am bound by the earlier decision of October 26, 2021, under the legal principle of *res judicata*. If the landlord wanted to assert he was not the landlord, rather that he was an agent of the landlord, the landlord ought not to have agreed to the settlement.

For this reason, I find the landlord listed in this application is responsible for the terms of the 2 Month Notice, as he agreed to on October 26, 2021. Apart from that, the landlord's name appeared as landlord on the written tenancy agreement and the 2 Month Notice, never indicating he was an agent. While the landlord submits his parents are the owners, I find the landlord is liable for the notice he issued to the tenants.

In determining whether the landlord occupied the rental unit for 6 months after the effective date, in this case, November 1, 2021, I find the landlord has submitted insufficient evidence to prove that he did. The landlord filed evidence only to show that his parents resided in the residential property, which they were already doing while the tenants lived upstairs. While the landlord said he also lived there, the landlord did not submit proof that he did. The landlord did not file any documents showing proof of residency, such as bank statements, utility bills, insurance records, or driver's licence to show residency at the rental unit.

I therefore find that the landlord submitted insufficient evidence to show that he occupied the rental unit for 6 months after the effective date, or at all, and as a result, I find the landlord must pay the tenants the amount of \$34,080, the equivalent of 12 times the monthly rent of \$2,840.

Section 51(3) of the Act authorizes the Director to excuse the landlord from paying the tenants the equivalent of 12 times the monthly rent if, in the Director's opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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.

In this case, the landlord presented no evidence or claim of extenuating circumstances. The landlord only wanted to show that he was not the landlord, that his parents resided in the rental unit, and that he lived in the residential property.

As I have found the landlord must pay the tenants compensation equal to 12 times the monthly rent due under the tenancy agreement, or \$2,840, and as I have found insufficient evidence of extenuating circumstances preventing the landlord from occupying the rental unit, I find the tenants have established a monetary claim of \$34,080.

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

As a result, I grant the tenants a monetary order (Order) of \$34,180, the equivalent of monthly rent of \$2,840 for 12 months, or \$34,080, and the cost of the filing fee of \$100.

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

Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent of \$34,080 and recovery of the filing fee is granted. The tenants have been granted a monetary order for \$34,180.

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: September 16, 2022

Residential Tenancy Branch