



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 for compensation pursuant to section 67 of the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other’s evidence and that they are not using a recording device for the hearing.

Preliminary Matter

Approximately halfway through the hearing the Landlord sought an adjournment to have a witness, referred to below as MW, attend the hearing to provide relevant evidence for the Landlord. The Tenant opposes the adjournment as the Landlord had ample time to produce evidence from MW and that the matter has already taken 6 months. The Tenant states that the Landlord was aware that evidence from MW was wanted by the Tenants as the Tenant had asked the Landlord several times to speak with MW and had earlier sought to obtain a summons for MW to appear and give evidence at the hearing.

Rule 7.9 of the RTB Rules of Procedure provides that, inter alia, the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment. The Landlord did not dispute that the Tenant was seeking evidence from MW. The Landlord had sufficient time to provide at a minimum, a Witness statement from MW. There is no evidence that MW was incapable of providing a statement prior to the hearing. For these reasons, I consider that the Landlord

neglected to act prior to the hearing, and I therefore decline the request for an adjournment to remedy that neglect.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Background and Evidence

The following are agreed facts: The tenancy of a lower unit in a house started on April 1, 2006 and ended on August 1, 2021. Rent of \$1,000.00 was payable on the first day of each month. The security deposit has been dealt with. The Landlord lives in the upper part of the house. The Landlord gave the Tenant a two month notice to end tenancy for landlord's use dated May 31, 2021 (the "Notice"). The Notice sets out an effective date of August 1, 2021 and that the child of the Landlord or the Landlord's spouse will occupy the unit.

The Tenant states that in March 2021 prior to service of the Notice the Tenant became aware that the Landlord wanted to renovate the unit contained in the lower part of a house. The Tenant provides a recording of this conversation. The Landlord also gave the Tenant a letter in April 2021 indicating that the landlord's daughter, (the "Daughter") who was living with the landlord, would be moving out and that the Landlord would therefore be losing rental income. The Landlord informed the Tenant of plans to renovate the unit to add another bedroom and to obtain monthly rent of \$1,800.00 for the renovated unit. The Tenant provides a copy of the letter. On February 22, 2022 the Tenant returned to the unit to collect mail and discovered a tenant in the unit. The Tenant states that this person ("MW") had been residing in the unit since October 1, 2021. The Tenant provides an audio recording of the February 22, 2022 discussion with MW. The Tenant states that the police were called on this occasion and spoke with the Landlord who mentioned that although the daughter was supposed to move into the unit the daughter never did. The Landlord informed the police that the daughter moved

elsewhere and so the Landlord rented the unit to someone else. The Tenant provides an audio recording.

The Landlord states that the Daughter was living with the Landlord to help with the Landlord's income and that the Daughter initially wanted to move out with her boyfriend. The Landlord states that there was no new tenant in October 2021. The Landlord states that MW resides in the unit along with the Daughter and the Daughter's boyfriend (the "Boyfriend"). The Landlord states that they share what is now a 3-bedroom unit. The Landlord states that the unit was "revamped" and no longer looks the same. The Landlord states that MW was a friend of the Daughter and the Boyfriend and began using a room in the unit as of October 1, 2021. The Landlord did not provide any statement from MW and the Landlord indicates that although they are in possession of a letter from MW this letter was not provided as evidence for this hearing. The Landlord states that the Daughter was not called out when police were there although the daughter was in the unit at the time. The Landlord thinks the Daughter moved into the unit around October 15, 2021. The Landlord provides photos of the Daughter's room, a driver's licence, and work location from home.

The Tenant states that the photos have no date and that there are no photos that include the unit, kitchen and bathroom. The photos are not of a bedroom in the unit and only show the Daughter's old room in the lower area. There are no photos to show any use of any part of the unit. The Tenant states that the photo of the bedroom shows a view that is not the view from the old room in the lower area.

The Daughter, appearing as witness for the Landlord, states that they moved into the unit and are sharing it with MW. The Daughter states that the Daughter pays monthly rent of \$500.00 to the Landlord and that MW who has a separate rental agreement with the Landlord pays monthly rent of \$500.00. The Daughter states that the Boyfriend pays monthly rent of \$500.00, and that the Boyfriend does not have a separate rental agreement with the Landlord. The Daughter states that at the time of the police

attendance the Daughter was in the upper part of the house taking care of the dog and that although they heard a commotion at the time the Daughter did not come out. The Daughter states that although MW has a child the child is not residing at the unit. The Daughter states that although MW has a current partner this person resides elsewhere at an unknown location and visits the unit a couple of times a week.

The Boyfriend, the Landlord's other witness, states that the unit is shared between the three of them: the Daughter, the Boyfriend and MW. The Boyfriend does not know the name of MW's child. The Boyfriend states that MW has a partner who resides elsewhere at the unknown location.

The Tenant's son (the "Son") states as a witness that MW and MW's partner were both at the unit on February 22, 2022. The Son states that the Landlord's Daughter was not seen at the unit at the time. The Son states that the Landlord informed the son that MW was the Landlord's daughter's boyfriend. The Son states that the Landlord did not answer the Son's question about who the woman was in the unit with MW at the time.

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.

It is undisputed that within two months of the effective date of the Notice the Landlord renovated and rented the unit to at least MW. It is the Landlord's own evidence that the

rent for the unit, whether from MW alone or in combination with the Daughter and Boyfriend, exceeds the rent being paid by the Tenant. The Landlord did not provide a copy of any rental agreement with MW although it is the Landlord's evidence that such a rental agreement was entered into. The Landlord provided no witness evidence from MW's partner although this person would likely have relevant knowledge and more impartial evidence of MW's tenancy or the occupation of the unit. For these reasons and given the Tenant's supported evidence that MW occupies the unit as a tenant, I find on a balance of probabilities that the unit was not used for occupation by the daughter but for rental income for the Landlord and that the Landlord must therefore pay the Tenant \$12,000.00 as the equivalent of 12 times the monthly rental.

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.

As the Landlord has not provided any evidence that there were extenuating circumstances that prevented the Landlord from accomplishing the daughter's occupation of the unit, I find that the Landlord is not excused from paying the amount required as set out above.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$12,000.00**. 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: October 19, 2022

Residential Tenancy Branch