Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement, pursuant to section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenants VB and SM (the tenant) and landlord LS (the landlord) attended the hearing. The landlord represented landlord PR. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Issues to be Decided

Are the tenants entitled to:

1. A monetary order in an amount equivalent to twelve times the monthly rent?
2. An authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule of procedure 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent."

Both parties agreed the tenancy started on June 01, 2020 and ended on January 31, 2022. Monthly rent when the tenancy ended was $1,800.00, due on the first day of the month. At the outset of the tenancy a security deposit of $900.00 and a pet deposit of $200.00 were collected and the landlord returned the deposits. The tenancy agreement was submitted into evidence.

Both parties agreed a Two Month Notice to End Tenancy for Landlord's Use (the Notice) was served on November 30, 2021. The landlord served the Notice because she planned to occupy the rental unit occupied by the applicants tenants (the rental unit). The parties submitted a copy of the Notice into evidence. The effective date was February 01, 2022 (the effective date).

The tenants are claiming compensation in the amount of $21,600.00 (12 months of monthly rent payment of $1,800.00) because the landlords did not move in and occupy the rental unit for six months after the effective date.

The landlord claims that extenuating circumstances prevented her from occupying the rental unit until March 31 and that she occupied the unit from April 01 to August 01, 2022.

The landlord affirmed that she divorced and moved to a new house in February 2021. The landlord decided to do a major renovation in the new house in May 2021. On July 20, 2021 the landlord moved to another rental unit (the TO rental unit) because of the renovation, which was supposed to last until October 2021. The landlord submitted a rental agreement indicating the tenant rented the TO rental unit from July 20, 2021 to October 31, 2021 for $3,995.00 per month.

The landlord stated the contractor of the new house informed her that the renovation would last an additional ten months. The landlord could not pay rent in the amount of $3,995.00 for the additional ten months and decided to move to the rental unit.

The landlord emailed the tenants on December 01, 2021:

> Unfortunately, I have some not so great news. As you know [redacted] and I have been separated and living apart since Feb 1, 2021 and I have been in the processing of renovating another home that was supposed to be done October 31, 2021. I just received notice a couple of weeks ago from my contractor who informed me it won't be done until June 2022. I have been renting a place that I thought was going to be short term....obviously not now. My only option is to move into your suite for the time being as it is the best solution in terms of affordability for me and stability of the kids. Not my first choice for apparent reasons.

The tenants disputed the landlord's Notice and served the landlord the notice of hearing for the tenants' application dated December 15, 2021 indicating the hearing was scheduled for March 25, 2022. The landlord applied for another rental unit (the IR rental unit) on December 13, 2021 (application submitted into evidence) because of the tenants' application to cancel the Notice. The landlord moved to the IR rental unit on January 15, 2022 and paid monthly rent of $2,150.00.

The landlord testified that on January 10, 2022 the tenants informed her they withdrew their application to cancel the Notice. The landlord missed the deadline to give notice to end tenancy at the IR unit and gave notice after January 15, 2022.

The landlord received possession of the rental unit on January 31, 2022 but could not move in, as she had a tenancy agreement at the IR rental unit until March 15, 2022.

The landlord painted the rental unit and removed tiles from the kitchen and bathroom of the rental unit February 01 and March 31, 2022. The landlord moved out of the IR rental unit on March 15, 2022, travelled with her children during spring break and moved to the rental unit on April 01, 2022.

The landlord moved out of the rental unit on August 01, 2022 and re-rented it. The landlord moved back to her new house, as the renovation finished. The landlord submitted an email from the contractor dated June 15, 2022:

> Please find attached the invoice for the management fee dated June 15 h. As we indicated previously we anticipate this is the final invoice to be rendered as your project is scheduled to complete by July 15th.

The tenant said the landlord acted in bad faith and did not occupy the rental unit for six months after the effective date. The tenant moved to a new rental unit in the same

neighbourhood and visited her former neighbours on March 30 and April 18, 2022. The tenant observed the landlord did not move to the rental unit, which remained unoccupied. The tenant observed workers renovating the rental unit in mid-April 2022.

The tenant submitted into evidence notes that she took and emailed herself on April 18, 2022:

> Visited friend today to pick up mail. Noticed 1hat the blinds were half covered. Still no furniture inside building but noticed 1hat walls had been painted white. Asked neighbour and was given information that over the course of the last few days, workers were in and out of the unit, likely painting. It is now mid April, a month and a half away from when landlord was going to be finished with needing the unit (needed from Feb June) and still no move in indicated-and renovations (painting) just beginning, despite not removing us for renovation purposes.

The landlord submitted into evidence two reference letters from former tenants indicating the former tenants had a good relationship with the landlord.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed:

> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 49 of the Act states:

> (2)Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy
>
> (a)for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
>
> (i)not earlier than 2 months after the date the tenant receives the notice,
>
> (ii)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) of the Act states:

(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.
[…]
(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.

(emphasis added)

I accept the uncontested testimony that the landlord served, and the tenants received the Notice on November 30, 2021.

Per Rule of Procedure 6.6 and section 51(2) of the Act, the landlord has to onus to prove that the stated purpose for ending the tenancy was accomplished.

Residential Tenancy Branch Policy Guideline 2A states:

6-month occupancy requirement
The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).
[…]
E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE

> If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:
> • taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
> • used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice
> the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

The landlord has to onus to prove that extenuating circumstances prevented her from occupying the rental unit from February 01 to March 31, 2022 and that she occupied the unit from April 01 to August 01, 2022.

The parties offered conflicting testimony regarding the occupancy of the rental unit after the tenancy ended. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlord did not submit documentary evidence to prove that she occupied the rental unit from April 01 to August 01, 2022. The landlord did not call witnesses. I find the landlord's testimony does not outweigh the tenant's testimony about the landlord not occupying the rental unit.

Considering the above, I find the landlord failed to prove, on a balance of probabilities, that she occupied the rental unit from April 01 to August 01, 2022.

As such, per section 51(2) of the Act, the tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenants a monetary award in the amount of $21,600.00 ($1,800.00 x 12).

As the tenants were success with their application, pursuant to section 72 of the Act, I authorize them to recover the $100.00 filing fee.

Thus, the tenants are entitled to a monetary award in the amount of $21,700.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenants a monetary award in the amount of $21,700.00.

The tenants are provided with this order in the above terms and the landlords must be served with this order in accordance with the Act. Should the landlords fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: November 09, 2022

Residential Tenancy Branch