



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on January 7, 2022. They are seeking an order for compensation from the Purchaser's prior end of the tenancy in 2021. Additionally, they seek reimbursement of the Application filing fee.

Pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act"), the matter proceeded by hearing on October 6, 2022, after adjournments on August 18 and September 12, 2022. In the conference call hearing, I explained the process and offered each party the opportunity to ask questions.

In the hearing on October 6, both parties confirmed they received prepared evidence from the other. On this basis, I proceeded with the hearing as scheduled.

Preliminary Matter – Purchaser disclosure

The first hearing in this matter took place on August 18. The parties jointly discovered the Tenant's error in their address for service. The Purchaser, via their assistant who attended hearings on their behalf, presented that they attempted service at the listed address via process server and showed picture evidence that the address in question was a vacant lot, without a postal address or actual place of residence. The Tenant acknowledged this in the hearing. I adjourned the matter in order for the Purchaser to complete service via email. The Tenant verified their correct email address in the hearing.

Taking the matter up again on October 6, the Purchaser presented that they emailed their evidence – containing a written response – the Tenant's email on August 19th. This was the day after the initial hearing. This is shown in the email to the Tenant's

email on August 19 at 2:11pm, showing an attached file. In the October 6 hearing the Tenant stated they did not receive that email from the Landlord containing evidence.

By Rule 3.15 and 3.16 of the *Residential Tenancy Branch Rules of Procedure*, I find that the Purchaser provided proof of their service of their materials they intend to rely on for this hearing to the Tenant. I specified this method via the verified email address the Tenant confirmed in the August 19 hearing. This is the email address that is on the Tenant's Application they completed on January 7, 2022.

I give full consideration to the material submitted to the Residential Tenancy Branch by the Purchaser. The Purchaser disclosed that material as required, on August 19, 2022 via email.

Issue to be Decided

Is the Tenant entitled to monetary compensation for the Two-Month Notice to End Tenancy for Purchaser's Use of Property, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement in their evidence and the Purchaser did not dispute any of the information contained therein. The tenancy began on February 1, 2020 on a month-to-month basis. The Tenant paid a rent amount of \$1,400 on the first of each calendar month.

The Purchaser, via the landlord previously in place, issued the Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice"). The copy that appears in both the Purchaser's and the Tenant's evidence is neither signed nor dated. This set the end-of-tenancy date for August 1, 2021. The reason indicated was that the Landlord or the Landlord's spouse would occupy the rental unit. The Tenant did not dispute this Two-Month Notice through a dispute resolution process.

The Tenant moved out from the rental unit on June 30, 2022. This was after they provided notice of that date to their landlord on June 18, 2022.

The Tenant presented that their final move-out date was August 1st, so the amount of free rent they are owed as per the *Act* was for the final month of the tenancy, being July 2022.

After they moved out from the rental unit, the Tenant received notifications through their social media of the rental unit's availability, via an auto-message feature they had for their own search in the area for a two-bedroom available rental unit. The first ad they noticed was dated July 26, 2021. As it appears in their evidence, the ad shows an availability date for August 1, 2021 for the amount of \$1,600. The Tenant made no direct inquiry on this to the listed representative on the ad; however, after they clicked on the ad their account was blocked so they were not able to further view the ad or make an inquiry on the status online.

The Tenant observed a second ad for the same rental unit, for \$700, with the rental unit already rented out to a single tenant, meaning the Purchaser was seeking a second tenant to stay in the rental unit in the second bedroom, making the total amount of rent to be \$1,400. The Tenant provided an image of that ad containing that information in their evidence, with a second ad page image showing the second bedroom in the rental unit being "offered for sub-rental." The Tenant pointed to specific information in the ad that reads: "1 bedroom available in 2 bedroom walkout basement suite. . . Another bedroom is occupied by two students (boys)."

The Tenant described observed a specific vehicle at the rental unit property on August 20, 2021. They described this as belonging to the new rental unit occupant whom they observed exit from the rental unit entrance at the rear of the property at 6:50pm on that date. The Tenant provided an image of that vehicle in their evidence.

The Purchaser, via an agent in the hearing, set out the following circumstances to present that extenuating circumstances prevented them from both accomplishing the stated purpose for ending the tenancy, and using the rental unit for at least 6 months' duration:

- they were a first-time homebuyer in Canada, not aware of the terms of the tenancy because it was not in the Purchaser's Statement of Adjustments as seen in their evidence
- they took possession of the rental unit on July 7 and moved into the whole rental unit house

- at that time, the Purchaser's parents were planning to come to Canada and they were unable to complete medical travel requirements until August 9 (i.e., well after the Purchaser's possession date, as shown on the application status document in the Purchaser's evidence)
- the Purchaser's spouse was diagnosed with a kidney issue, leaving them unable to work as of May 2021
- the Purchaser was having to take time off from work because of these matters, and this negatively affected their income, as shown in the records of employment in the Purchaser's evidence showing payouts because they were no longer working
- the Purchaser was then dismissed from their job because they were taking too many days off
- during this time, the Purchaser had a mortgage in place for the rental unit property
- they rented out the rental unit for a short-term rental
- the Purchaser's parents arrived in January 2022, and the Purchaser became self-employed around that time.

The Purchaser reiterated that it was a short-term rental, given the circumstances of their being unable to afford the mortgage and hoping for their parents help. Their income was affected by their spouse being unable to work, as shown in a doctor's note (undated), stated that they were unable to work since January 2021.

The Purchaser submitted that, by the time they sought a tenant (referred to as a "roommate") on July 26, they could not get out of their purchase of the rental unit property at that time. They then revised the plan to have a tenant from the initial ad of \$1,600, to only 1 bedroom/bath for \$700. This was after two prospective tenants did not proceed with the arrangement. They posted an ad on July 26 and showed the rental unit to a few people; however, when they realized a full-term one-year tenancy agreement would not work because of their pending parents' return, they rented out only one bedroom for \$700, and that started in mid-August 2021. In total, one tenant stayed in the rental unit until September 15, and then another separate tenant stayed from September 2021 to January 2022. These arrangements were for cash and a verbal agreement only, due to the short-term nature of the agreement.

In response to a direct question from the Tenant in the hearing, the Purchaser clarified that the intention was for the Purchaser to occupy the home with their family, and this was with the plan to enable assistance for family members' who had illness. The short-term rental was only in place to help with the costs of paying for the mortgage, in light of

the spouse's illness requiring the Purchasers time off from work ultimately resulting in loss of their job, and parents' non-arrival.

Analysis

Under s. 49 of the *Act* a Purchaser (via a landlord as per s. 49(5)(c)) may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. The Purchaser here issued the Two-Month Notice, via the Tenant's landlord, for this reason.

There is compensation awarded in certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 51:

- (2) Subject to subsection (3), the landlord . . . must pay the tenant . . . an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord . . . 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 . . . 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 . . . from paying . . . if, in the director's opinion, extenuating circumstances prevented the landlord . . . 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 . . . for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The onus is on the Purchaser to prove that they accomplished the purpose for ending the tenancy and that they used the rental unit for its stated purpose for at least 6 months. Failing this, the Purchaser must present that extenuating circumstances prevented this.

The original Two-Month Notice has the indication that "the landlord or the landlord's spouse" would occupy the rental unit. I find the Purchaser's intention was for their whole family to occupy the whole of the rental unit home, including the separate basement rental unit. Because the Purchaser themselves occupied the whole of the house after the purchase and after the Tenant moved out, I find they did occupy the rental unit as indicated on the Two-Month Notice.

Stated thus, the Purchaser did use the rental unit for that reason for a 6-month period. They were in the home, and there is no evidence to show they partitioned the rental unit off for use only by new tenants. Their use was not negated by them taking on a single-room occupant in the rental unit. This was not a situation where the Purchaser rented out the whole of the rental unit to new tenants under a new tenancy agreement, even though it appears the Purchaser at one point had that design in place. I find the Purchaser's account sound and plausible that it was a very short-term temporary arrangement with a single "roommate". This was simply because they had the need for additional income during this difficult time when they were unemployed and having to pay the mortgage.

I accept the Purchaser's explanation that their initial ad was in effect withdrawn once the initial prospective tenants did not stay; therefore, the new rental agreement did not proceed. Even though it was a prospective arrangement, I accept the Purchaser's account that there was no new tenancy agreement with new tenants, which would completely negate the reason for which the Purchaser sought to end the tenancy.

After this, I find the Purchaser acquiring a single-room occupant, in light of the more urgent situation they were facing with economic hardship, does not negate their stated intention to occupy the rental unit. In sum, the Purchaser themselves occupied the rental unit, as was indicated on the Two-Month Notice. This was both within a reasonable period of time, and for at least 6 months' duration as required. This is not outweighed by what the Tenant presented as evidence of the Purchaser posting an ad to acquire new tenants online.

I find the Purchaser has established that the stated purpose for ending the tenancy was accomplished, and for at least 6 months' duration; therefore, there is no requirement as per s. 51(2) for the Purchaser to pay 12 times the monthly rent amount.

In the hearing, the Purchaser granted they were not aware of the equivalent of one month's rent, as per s. 51(1). As stated, they were okay with one month's rent amount payable to the Tenant. I so grant a monetary order to the Tenant for the exact amount of one month's rent, at \$1,400.

Because the Tenant was moderately successful in their Application, I grant one-half of the Application filing fee to them. This is \$50.

Conclusion

Pursuant to s. 51(1) and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,450. The Tenant is provided with this Order in the above terms, and they must serve it to the Purchaser as soon as possible. Should the Purchaser fail to comply with this Order, the Tenant may file the Order in the Small Claims Division of the Provincial Court where it may 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 s. 9.1(1) of the *Act*.

Dated: November 2, 2022

Residential Tenancy Branch