



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenant (hereinafter the “Tenant”) filed an Application for Dispute Resolution on March 10, 2022. They are seeking compensation related to the Landlords (the “Landlord”) ending the tenancy, and reimbursement of the Application filing fee.

The matter proceeded by hearing on November 7, 2022 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing, I explained the process and offered each party the opportunity to ask questions. The Landlord confirmed they received the documentary evidence of the Tenant in advance. The Landlord also confirmed they did not provide evidence for use in this hearing.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the Landlord ending the tenancy, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant did not provide a copy of a tenancy agreement document; however, they addressed all points thereof in the hearing. The tenancy started in January 2010 at \$1,100, as confirmed by their former Landlord in a text message to the Tenant dated January 24, 2022. This rent amount increased in 2019 to \$1,165. Over the course of the tenancy from January 1, 2010 to September 30, 2021, the Tenant had three

landlords. The Respondent Landlord in this hearing started in May 2021, as the Landlord here confirmed in the hearing.

The Landlord issued the Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice") on May 30, 2021. This was for the move-out date of August 1, 2021, then amended to "September 31, 2021." On page 2 of the Two-Month Notice, the Landlord indicated "The child of the landlord or the landlord's spouse" would occupy the rental unit.

In the hearing, the Tenant described having the option of a two-month timeline or a four-month timeline for the end-of-tenancy date. They confirmed they did not challenge the validity of this Two-Month Notice in a formal dispute resolution process. The Tenant moved out from the rental unit on September 30, 2021, receiving one month rent-free, and the full return of the security deposit.

In the hearing the Landlord stated they travelled to another country on October 19, 2021, and returned on December 4, 2021. This delayed the start to a renovation process they wanted to undertake in the rental unit prior to their family member's move in. They started renovations at the end of January 2022 and finished those renovations in March 2022. This was renewing the bathroom, adding closets to the rental unit and painting the unit throughout.

The Landlord's family member moved in to the rental unit in late March or early April 2022. The Landlord in the hearing stated essentially the delay on renovations was because of their overseas trip.

In the hearing the Landlord recalled having an informal meeting with the Tenant when they first became the Landlord at this rental unit; this occurred in late April – early May 2021. As the Landlord recalled, they were giving the Tenant the option to move by September; however, the Tenant indicated a September end-of-tenancy would be okay. The Tenant recalled the discussion focusing on an increase in rent to which they did not agree. This followed with a "few tenancy-end letters" (as provided in their evidence), with the reason for the Landlord needing to end the tenancy being renovations.

The Tenant described visiting their previous rental unit after they moved out; this was to retrieve a parcel that was sent to their previous address. This was on December 24, 2021. All that was visible to the Tenant on their closer inspection was "just empty, no blinds" so they could see in to the rental unit, confirming it was empty.

In January 2022, the Tenant noticed renovations starting. On another closer inspection, they walked up to the gate at the rental unit property and could see it was “gutted” with construction materials. The Tenant included photos in their evidence showing their view through a window, construction materials on the property, and “construction dust” outside the garage door.

In March, the Tenant noticed vehicles present; however, the Tenant acknowledges they did not observe the people closely. In the Tenant’s evidence are two photos showing vehicles at the rental unit property; these are dated February 12, 2022.

The Tenant applied for 12 months of their monthly rent amount, being the amount owed where the Landlord did not accomplish the stated purpose for ending the tenancy within a reasonable period after the end-of-tenancy date. This is \$13,980.

Analysis

Under s. 49(5) of the *Act* a landlord may end a tenancy if a purchaser asks the landlord in writing to end the tenancy, in good faith, for their own occupancy of the rental unit.

A Tenant’s compensation in these circumstances is governed by s. 51 which provides:

- (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 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 . . . 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 the tenant the amount required under subsection (2) 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.

I find above the effective date of the One-Month Notice was September 30, 2021. I discussed this with the parties in the hearing, verifying with the use of a calendar that there was no date of September 31, 2021.

After that date, the Landlord traveled from October 19 to December 4, 2021 as they presented in the hearing. After that time, renovations in the rental unit began at the end of January 2022. This is some 4 months where the unit was not occupied, not used for the stated purpose for the which the tenancy ended.

The Landlord's family member eventually moved into the rental unit. As presented by the Landlord in the hearing, this was late-March or early-April 2022.

I find the Landlord has not established that the rental unit was used for the stated purpose within a reasonable period after the tenancy ended on September 30, 2021. The Landlord presented that there were discussions about an end-of-tenancy date; however, the Landlord issued and served a Two-Month Notice, and that was the legally binding document that was in place, despite other previous discussions. The delays for renovations starting, due to the Landlord's own travel, and then a six-month timeframe for their family member to move into the rental unit are not reasonable, minus detail showing substantial uncontrollable delay or other extenuating circumstances.

The Landlord did not overcome the burden of proof to show the time period was reasonable in the circumstances. I find the evidence does not show extenuating circumstances were present preventing the Landlord from accomplishing the stated purpose for ending the tenancy within a reasonable timeframe.

For these reasons, I find the Tenant is entitled to compensation. I grant the Tenant compensation in the amount specified by s. 51(2), the equivalent of twelve times the amount of the monthly rent of \$1,165. This is \$13,980.

The Tenant was successful in this Application; therefore, I grant reimbursement of the Application filing fee.

Conclusion

Pursuant to s. 51, I grant the Tenant a Monetary Order in the amount of \$14,080. The Tenant is provided with this Order in the above terms, and they must serve it to the Landlord as soon as possible. Should the Landlord 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 10, 2022