



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on March 22, 2022 seeking compensation for the Landlord’s ending of the tenancy, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 21, 2022.

Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, both parties confirmed they received the prepared documentary evidence of the other. On this basis, the hearing proceeded.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”), 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, signed with the Landlord on April 5 and 6, 2018. The tenancy started on May 1, 2018, set for a fixed term to April 30, 2019. After that time the tenancy continued on a month-to-month basis. The tenancy agreement establishes that the rent was \$1,300 per month and this did not increase over the course of the tenancy.

The Landlord issued the Two-Month Notice on December 30, 2021, for the tenancy end date of March 1, 2022. The reason indicated on the document was that the Landlord or the Landlord's close family member would occupy the rental unit. The Tenant did not dispute the Landlord issuing the Two-Month Notice.

In the hearing, the Tenant provided that they moved out from the rental unit on February 28, 2022.

Prior to this, the Tenant noticed an online advertisement for the rental unit. The information on this in their evidence is:

- an online ad posted on February 19, 2022, asking for \$1,550 per month for the "1st floor" of the rental unit property – this ad contained images of different views of the rental unit
- an email inquiring on the availability of the rental unit on February 22, 2022 – the Landlord responded the Tenant was still available
- an email inquiring to the Landlord about the apartment availability, on February 22, 2022 – the Landlord responded to say they could show the unit to the inquirer on the following day. This was sent from the Tenant's counsel to the Landlord.
- a text message from February 28 to the number indicated in the Landlord's email responses – the Landlord responded to the inquirer at 8:28am to say "Its rented sorry"

The Tenant recalled one discussion they had with the Landlord, prior to their moveout, in which they stated to the Landlord it was very hard to find a new rental unit. The Landlord said they would cancel the Two-Month Notice; however, they proposed a rent increase if the Tenant should remain in the rental unit. The Tenant declined this offer.

In January, the Tenant had another discussion with the Landlord about the rental unit. At that time, the Landlord confirmed their child would be moving into the rental unit. In the hearing, the Tenant noted that this child was one of the named Landlords on the tenancy agreement, originally signing the agreement on April 6, 2022.

The Tenant in the hearing also described the rental unit as being one of three that were present in the rental unit property. The Landlord – i.e., the Landlord's named child who also signed the tenancy agreement as "Landlord" – was living in the third unit on the rental unit property. That person in the hearing confirmed that the third unit on the rental unit property was later closed and demolished.

The Landlord in the hearing confirmed that they had a discussion with the Tenant in January, and at that time the Tenant had confirmed that they found a new rental unit to move to. It was this confirmation from the Tenant that was the reason why the Landlord posted an ad online to find a new tenant for the rental unit. The Landlord confirmed they rented to a new tenant, because "[they were] not responsible any more for the rental unit", meaning their child – i.e., the named Landlord also on the agreement – rented to new tenants.

The Landlord explained they had a power of attorney agreement. This agreement ended, meaning they did not live together anymore. The adult child of the Landlord confirmed they were living in the rental unit from October 2022 onwards. The tenants they rented to in March 2022 had moved out after 6 months' time.

In response to the explanation in the hearing, the Tenant noted that responsibility under the *Act* by the Landlord was joint and several. They responded that the Landlord's power-of-attorney agreement is of no concern in this matter.

Analysis

The *Act* s. 49 allows for a landlord to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in the situation where a landlord issues a Two-Month Notice. This is covered in s. 51:

- (1) A tenant who receives a notice to end tenancy under s. 49 is entitled to receive from the landlord . . .an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (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
 - (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose of ending the tenancy, or
 - (b) 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.

- (3) The director may excuse the landlord . . . 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, or
 - (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 Residential Tenancy Policy Guideline #50 – that which gives a statement of the policy intent of the legislation – provides that extenuating circumstances are those “where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner’s control.”

Here, the Landlord issued the Two-Month Notice on December 30, 2021. The Tenant did not challenge the validity of the Two-Month Notice and moved out by February 28, 2022. Approximately two weeks prior to their move out, the Tenant discovered the online ad, and an acquaintance confirmed both the rental unit’s availability as posted in the ad, and then its’ new occupancy by new tenants by February 28.

I note the *Act* specifies that a tenant is eligible for compensation where they *receive* a notice to end tenancy under s. 49. The fact that the Landlord attempted to cancel the notice (with a proposed rent increase) is immaterial. Also immaterial is the fact that the Landlord alternately named one of the named Landlords, who was the other Landlord’s own child, as the party to move into the rental unit.

I find the evidence shows the Landlord did not take steps to accomplish the stated purpose of issuing that Two-Month Notice. They sought new tenants by mid-February. They alluded to this as being necessary because the Tenant had confirmed they found new living arrangements; however, the fact remains that the Landlord issued a Two-Month Notice ostensibly for their own use of the rental unit.

The Landlord definitely acquired new tenants, and the agreement they had in place with these new tenants was in place for approximately six months after that. I find the Landlord is accountable for having a shorter-term tenancy in place by March 1, immediately after the Tenant had to vacate. I conclude the rental unit was definitively *not* used for its stated purpose for at least 6 months’ duration.

Further, I find extenuating circumstances did not prevent the Landlord from accomplishing the stated purpose within a reasonable period after the end of the tenancy. The Landlord explained the need to do away with an existing power of attorney agreement between them; however, this is immaterial.

I find this is a situation where s. 51(2) applies. For this, the Landlord must pay the equivalent of 12 times the monthly rent payable under the tenancy agreement. This is the amount of \$15,600 as claimed by the Tenant.

Because the Tenant was successful in their Application, I grant the full amount of the \$100 Application filing fee to them.

Conclusion

Pursuant to s. 51 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$15,700. 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 21, 2022

Residential Tenancy Branch