



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on November 29, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

Both parties attended the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding and evidence packages. No issues were raised with the service of these documents. I find the Tenant sufficiently served the Landlord for the purposes of this proceeding.

The Landlord stated she gave the Tenant 2 different evidence packages. The first was sent by mail and the Tenant confirmed receipt of it, in July or August 2022. The Landlord stated she posted a second package of evidence to the Tenant's front door on November 22, 2022. The Landlord did not provide any proof of service. The Tenant denies receiving this package. The Landlord was asked why she waited so long to serve her evidence, rather than serve it sooner. However, no clear explanation was provided.

As per Rule of Procedure 3.15, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I note the Landlord stated she posted it to the Tenant's door on November 22, 2022. However, pursuant to section 90 of the Act, items served in this manner are not deemed to have been received until 3 days later. As such, even if I accept that it was served in this manner, I find it is late, as it would not be deemed served until November

25, 2022, which is beyond the allowable time frame. Further, I note the Landlord provided no compelling explanation why she could not comply with the evidence deadlines. I find the Landlord's second evidence package is not admissible, and will not be addressed further.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

The Tenant stated that monthly rent was set at \$1,150.00. The Tenant stated she received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) in May 2021, and moved out on or around June 1, 2021. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
 - The father or mother of the Landlord or Landlord's spouse

The Tenant stated that she lived in this basement suite for 5 years, and the house sold in the spring of 2021, shortly before she received the Notice. The Tenant stated that after she moved out on June 1, 2021, she heard from her neighbour and friend (sometime in July 2021) who said that they had seen a man coming and going from the property who did not appear to be related to the Landlord and appeared to be living there. Also, the Tenant stated that she went back to the rental property in June of 2021, and at that time the Landlord's husband let her inside the rental unit to show her the renovations that were being done. The Tenant provided a few photos from this viewing.

The Tenant further stated that the Landlord appeared as though they were replacing the lock on one of the basement bedroom doors, and that they were planning on converting the previous 2-bedroom suite, into aa 1-bedroom suite.

The Tenant stated that over the next several months, she went by the house and was unsuccessful trying to get in touch with the Tenant who was living in the basement but she was able to take a photo of some mail addressed to him in July of 2022. Following this, the Tenant went back to the rental property on September 27, 2022, and spoke with the person who was residing in the basement suite, and she captured a voice recording of her interactions with him. This recording was provided into evidence. The recording indicates that the fellow living in the Landlord's basement admitted to not being related to the Landlord.

The Landlord stated that she followed all protocols when issuing this Notice, and their plan was to use the whole house for family use. During the hearing, the Landlord explained that her mother-in-law is living with them in the house, and is occupying one of the bedrooms in the basement, and they also rent another one of the rooms out to another male who is not related to the family. The Landlord was unclear and unsure about the exact date that this other fellow moved into the basement. The Landlord confirmed that it was the same fellow the Tenant saw mail addressed to, and who the Tenant recorded when she attended the unit on September 27, 2022. The Landlord stated they did not perform any major renovations to the unit, and only painted, and did superficial repairs.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENVOATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished 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 (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- *accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlord to demonstrate that he accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. The Landlord selected the following ground:

- The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
 - The father or mother of the Landlord or Landlord's spouse

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

51 (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

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for 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 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 the case may be, 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.*

In this case, I note the onus is on the Landlord to prove that she accomplished the stated purpose on the Notice, which is that her parents, or husband's parents would be moving into the rental unit. I note the Landlord stated that her mother-in-law has moved into the basement, into one of the bedrooms that used to be part of the "rental unit". However, she has provided no admissible documentary evidence to support that this has occurred, or if it did, when. The Tenant stated she suspects the Landlord re-rented the suite to another person, who she confirmed was not a family member via the recording she obtained on September 27, 2022. Although it is unclear when exactly this other person moved into the house, and exactly what portion of the basement area he occupies, I find the Landlord has provided insufficient corroborating evidence to demonstrate that her mother-in-law has moved into the area that used to be the rental unit.

I note the onus is on the Landlord to demonstrate that she accomplished the stated purpose on the Notice and did so for at least 6 months, after the effective date of the Notice, unless she has an extenuating circumstance. I do not find the Landlord has sufficiently met the burden of proof on this matter, particularly given the alternative scenario provided by the Tenant.

As a result, I find it more likely than not that the Landlord breached section 51 of the Act, which typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that she should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- *A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- *A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

The Landlord did not speak to any extenuating circumstances. As such, I am not satisfied that there were any “extenuating circumstances”, such that it would be unreasonable or unjust for the Landlord to pay the compensation.

I award the Tenant \$13,800.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$1,150.00. I also award the \$100.00 filing fee.

Conclusion

I grant the Tenant a monetary order in the amount of \$13,900.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 30, 2022

Residential Tenancy Branch