



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC**

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 28, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation relating to a Two Month Notice to End Tenancy for Landlord's Use.

Preliminary Matters

The parties had a dispute resolution hearing scheduled on September 12, 2022. The Tenant attended the hearing; however, no one appeared for the Landlord. In the decision dated September 12, 2022 the Arbitrator awarded the Tenant compensation equivalent to twelve times the amount of rent as the Landlord had not demonstrated that they accomplished the stated purpose of the Two Month Notice.

The Landlord applied for a review consideration on September 24, 2022 and was granted a new hearing based on the fact that Landlord was unable to attend the hearing for reasons outside of their control. A new hearing was granted, which was scheduled for November 21, 2022 at 1:30PM.

The Tenant and the Landlord attended the review hearing at the appointed date and time. At the start of the review hearing, the Tenant confirmed receipt of the interim decision, and the Notice of Reconvened Hearing. As such, I find these documents were sufficiently served pursuant to Section 71 of the Act.

The Landlord stated that they served their documentary evidence to the Tenant on November 10, 2022 by Registered Mail. The Tenant stated that they have not yet

received the Landlord's evidence. The Landlord submit the Canada Post Registered Mail tracking information which confirms that the Landlord's evidence was sent on November 10, 2022. As such, pursuant to Section 88 and 90 of the Act, I deem the Tenant to have been served with the Landlord's evidence five days later, on November 15, 2022.

Preliminary Matters

According to Rule of Procedure 3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch **not less than seven days before the hearing.**

Having found that the Tenant is deemed to have been served with the Landlord's evidence on November 15, 2022, I find that this is only 5 days before the hearing, which is less than the 7 days requirement. I find that the Landlord has served their evidence to the Tenant late, therefore, the only evidence I will consider by the Landlord is their oral testimony during the hearing.

The parties were given an 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.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for compensation relating to a Two Month Notice to End Tenancy, pursuant to Section 51 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2021. During the tenancy, the Tenant was required to pay rent in the amount of \$1,450.00 which was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$600.00 which has since been returned to the Tenant. The Tenancy ended on December 31, 2021 in compliance with the Two Month Notice.

The parties testified and agreed that the Landlord served the Tenant with the Two Month Notice dated November 2, 2021. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"The rental unit will be occupied by the Landlord's Father."

The Tenant stated that her son lives in the basement suite next to the rental unit that the Tenant was required to vacate. As such, the Tenant stated that her son was able to observe two individuals occupy the rental unit after the end of the tenancy, and that neither of which were the Landlord's father. The Tenant stated that her son got to know the new occupants who were identified that the Landlord's cousins. The Tenant stated that she is seeking compensation equivalent to twelve times the amount of monthly rent as the Landlord did not accomplish the stated purpose of the Two Month Notice.

The Landlord stated that the purpose behind serving the Two Month Notice was so that her father could sleep and use the downstairs space given the conflict between the Landlord's father and brother. The Landlord stated that there is a door inside the rental unit which leads upstairs to where the Landlord resides with her parents. The Landlord stated that as of January 1, 2022 the Landlord's father started using the space downstairs which had previous been the rental unit occupied by the Tenant.

The Landlord confirmed that her cousins were also moving to the city, and were having difficulties finding accommodations, therefore, they moved in with the Landlord's father in the basement suite as of January 1, 2022 until the summer of 2022. The Landlord stated that this was not the intent behind the Two Month Notice and that her cousins were only meant to stay temporarily. The Landlord stated that the intent was to have her father use the rental unit to distance himself from the Landlord's brother.

The Tenant stated that in their Application for Review, the Landlord submitted that the rental unit was being occupied by the Landlord's brother, not her father which contradicts the stated purpose of the Two Month Notice. The Landlord stated that she was not feeling well when she submitted the Application for Review and that this was a

mistake. The Landlord confirmed that she has re-rented the rental unit as of September 15, 2022 to new occupants.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Tenant is claiming compensation in the amount of \$17,400.00 which represents twelve months of rent as the Landlord did not accomplish the stated purpose of the Two Month Notice for at least six months after the effective date of the notice.

According to Section 50(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]*, the tenant may end the tenancy early by;

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
 - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

I accept that the Landlord served the Tenant with a Two Month Notice dated November 2, 2022. I accept that after receiving the Two Month Notice, the Tenant complied and vacated the rental unit on December 31, 2021.

According to Section 51(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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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 find that the Landlord provided conflicting testimony and submissions. While the Landlord stated that it had not been her intent to have her cousins moving into the rental unit, I find in the Landlord's own testimony, her cousins moved into the rental unit the very next day after the Tenant vacated. I find that the Landlord provided insufficient evidence to demonstrate that her father occupied the rental unit as well.

Furthermore, I find that the Landlord's Application for Review clearly states that:

"I was very ill and only felt better yesterday. I did not check my email to see that there was a decision made. The amount awarded against me is quite significant and I would greatly appreciate the opportunity to defend myself. I was unable to

attend the hearing because I was so sick. I have a meritorious defence that should be considered.”

“I was extremely ill on the day of the hearing. I had a fever, chills and body aches. Please see doctor's note submitted on previous page regarding my inability to appear at the hearing. Even though the hearing was by phone I could barely get out of the bed and was not able to call in. I have multiple witnesses that will testify that my brother moved into the unit after the tenant moved out. We are not renting the unit out.”

During the hearing, the Landlord stated that she was ill at the time of submitting her Application for Review, however, in the Landlords Application for Review, she indicates that she felt better as of the day before submitting the Application for Review, and then indicated that the Landlord has multiple witnesses that will testify that the Landlord “brother” moved into the rental unit after the Tenant moved out.

In this case, I find that the conflicting testimony and submission of the landlord raises some doubt to the legitimacy of the Two Month Notice. I find that the Landlord has provided insufficient evidence to demonstrate that the Landlord's father occupied the rental unit, which was the stated purpose of the Two Month Notice. Instead, I accept that the Landlord's cousin and/or brother, occupied the rental unit as indicated by the Landlord. I find that the Landlord's cousin and brother are not recognized as close family members for the purposes of ending the tenancy with the Two Month Notice.

Based on the above I find that the Tenant is entitled to \$17,400.00 in compensation from the Landlord, pursuant to section 51(2) of the *Act*.

Conclusion

The Landlord has provided insufficient evidence to demonstrate that they have accomplished the stated purpose of the Two Month Notice. I find that the original decision and monetary order dated September 12, 2022 are reconfirmed.

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 21, 2022