



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- an order authorizing the tenant the recovery of the filing fee for this application from the tenant pursuant to section 72.

This matter was scheduled for a conference call at 1:30 p.m. on this date. Each party gave affirmed testimony and were given an opportunity to provide evidence, submit documentation, and make submissions and arguments to me.

Preliminary Issue #1 – Who is the landlord?

At the outset of the hearing, the tenant advised that she didn't believe the party in attendance; WWJ is the landlord nor is XQZ. CM submits that the landlord is SLF. CM testified that SLF was her landlord since her tenancy began in March 2015. SLF gave her a Two Month Notice to End Tenancy for Landlords Use of Property on May 15, 2021 with an effective date of July 31, 2021. CM testified that the notice was given as SLF had sold the property to XQZ and that they had asked for vacant possession of the home.

CM testified that she moved out early on June 30, 2021 but did not receive the one months rent as compensation as required under sections 49 and 51 of the Act. WWJ testified that they did not take possession of the home until June 30, 2021, after the

tenant had moved out. WWJ agrees with the tenant that she also believes SLF is the landlord and that she should be the one to answer to the tenants claim.

Analysis

WWJ provided documentation that supports that she and her husband purchased the home and did not take possession until June 30, 2021; after the tenant moved out.

The Residential Tenancy Act says:

Landlord's notice: landlord's use of property

49 (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

49 (5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Tenant's compensation: section 49 notice

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) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

In addition to the above, Residential Tenancy Policy Guideline 50 says:

B. COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS Section 51(1) of the RTA requires a landlord who gives a notice to end a tenancy for landlord's use under section 49 to pay compensation to the tenant for ending the tenancy. Under the RTA, a tenant who receives a valid notice to end tenancy for landlord's use 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.

A tenant who is entitled to receive one month's rent under these sections may instead withhold that amount from the last month's rent. If the tenant ends the tenancy earlier in these circumstances, as permitted by section 50 of the RTA, and before withholding the last month's rent, **the landlord** must refund that amount.

I find that SLF is the landlord for the following reasons:

- The purchaser was not the landlord at any time for this tenancy.
- The landlord issued the 2 month notice to the tenant, not the purchaser.
- 1 month rent is due during tenancy, not after its over.
- Purchaser took possession of rental unit after tenant moved out – tenancy was over.
- The 2 month notice says on page 3 the above part – landlord must pay 1 month rent comp to tenant, not the purchaser.

- Section 51 Act says landlord pays 1 month rent to tenant; not the purchaser.

Based on the above, I find that SLF is the landlord, not the purchasers; WWJ and XQZ.

Preliminary Issue #2 Service of Notice of Hearing and Application to SLF

CM testified that she was granted a Substituted Service Order by an Adjudicator so that she could serve SLF notice of today's hearing. When asked when she served SLF, CM testified that she served her by email sometime in March or early April but didn't have a copy of the email she sent her as her email auto deletes after three months. The substituted order was granted on April 28, 2022; after the date the tenant testified that she had served SLF. With the lack of documentation to corroborate that she had served SLF and the contradictory testimony before me, I am not satisfied that SLF has been served notice of this hearing in accordance with section 89 of the Act and therefore dismiss this application in its entirety with leave to reapply.

Conclusion

WWJ and XQZ are not the landlords for this tenancy, SLF is.

The tenant's application against SLF is dismissed in its entirety with leave to reapply. The request to recover the filing fee is dismissed without leave to reapply.

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: December 01, 2022

Residential Tenancy Branch