



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNETC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant March 27, 2022 (the “Application”). The Tenant applied as follows:

- For return of \$100.00 of the security deposit
- For compensation because the Landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package and Tenant’s evidence and confirmed there are no issues with service. The Tenant testified that they did not receive the Landlord’s evidence. The Landlord had not served their evidence on the Tenant as required. The Tenant agreed to admissibility of the Landlord’s evidence given the nature of it and therefore it has been admitted.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of \$100.00 of the security deposit?
2. Is the Tenant entitled to compensation because the Landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The parties agreed rent at the end of the tenancy was \$1,290.40. Rent was due on the 5th day of each month.

The parties agreed the tenancy ended November 01, 2021.

Security deposit

The Tenant sought \$100.00 of the security deposit back and the Landlord agreed to send this back to the Tenant by e-transfer to the Tenant's email noted on the Application by December 04, 2022.

Section 51 compensation

The Tenant sought \$15,484.00 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the "Act") based on the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 05, 2021 (the "Notice").

The Notice was submitted. The Notice does not have an effective date. The Notice states that the Landlord or Landlord's spouse intends to occupy the rental unit.

The Tenant testified that they understood the Notice to be effective at the end of November given the date of the Notice and when the Tenant paid rent. The Tenant testified that they provided the Landlord 10 days notice ending the tenancy early and moved out November 01, 2021.

The Landlord testified that their family previously lived with other family members for six or seven years. The Landlord said their wife and sister-in-law did not get along and did

not want to live together so the Landlord issued the Notice for their family to move into the rental unit. The Landlord and their family moved into the rental unit November 04, 2021, and stayed for a week and a half. The Landlord's children hated living in the rental unit without their other family members and because the rental unit was not as nice as the house they were used to. The Landlord testified that their wife and children wanted to move so they moved into a different house. The Landlord stated they are relying on extenuating circumstances being that their family did not like living in the rental unit.

The Tenant testified that they thought the Landlord's family was moving into the rental unit. The Tenant said the Landlord told them the Landlord's children did not feel comfortable at the rental unit. The Tenant testified that the neighbour of the rental unit saw other people moving into the rental unit within one week of the Tenant moving out.

At the end of the hearing, the Landlord added further submissions as follows. There was a mutual understanding between the parties that the Tenant would move out of the rental unit. The Landlord did not "push" the Tenant out of the rental unit. The parties agreed the Tenant would move out and signed a Mutual Agreement ending the tenancy. The Landlord issued the Notice and then the parties signed the Mutual Agreement. The Landlord did not withdraw the Notice but did tell the Tenant they could stay in the rental unit a bit longer. The Mutual Agreement states that neither party owes the other anything. The Mutual Agreement was separate and apart from the Notice. It was always the case that the Tenant was moving out of the rental unit so that the Landlord and their family could move into the rental unit.

The Tenant testified that they received the Notice and then the Mutual Agreement and they did not know what they were signing. The Tenant testified that they thought the Mutual Agreement was signed to end the tenancy pursuant to the Notice. The Tenant testified that it was always the case that the Tenant was moving out of the rental unit so that the Landlord and their family could move into the rental unit.

The parties submitted a copy of the Tenant's 10 day notice ending the tenancy early which states that it is being given pursuant to the Notice and related legislation. The 10 day notice states that the last day of the tenancy will be October 31, 2021. The parties submitted the Mutual Agreement signed by them which shows the parties agreed to end the tenancy January 05, 2022.

Analysis

Security deposit

The parties agreed the Landlord would return \$100.00 of the security deposit to the Tenant by e-transfer to the Tenant's email noted on the Application by December 04, 2022, and therefore the Landlord is ordered to do so.

Section 51 compensation

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...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 the landlord...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. (emphasis added)

(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 or the purchaser, as applicable, 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. (emphasis added)

RTB Policy Guideline 50 addresses section 51 of the *Act* as well as extenuating circumstances. The onus is on the Landlord to prove they followed through with the stated purpose of the Notice for at least six months. The onus is also on the Landlord to prove extenuating circumstances. Policy Guideline 50 states as follows in relation to extenuating circumstances:

G. EXTENUATING CIRCUMSTANCES

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that **prevented** the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose **for at least months**, or from complying with the right of first refusal requirement.

These are circumstances 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. Some examples are:**

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent **dies** one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The following are probably **not extenuating circumstances**:

- **A landlord ends a tenancy to occupy the rental unit and then changes their mind.**
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.
- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

(emphasis added)

I find this tenancy ended pursuant to the Notice. The Notice was issued to the Tenant and never withdrawn. The Tenant provided the Landlord 10 days notice ending the tenancy early, their last day of tenancy being October 31, 2021, and the Tenant did in fact move out November 01, 2021. The 10 day notice was only permitted because the Tenant received the Notice and the tenancy was ending pursuant to the Notice. Both parties acknowledged it was always the case that the Tenant was moving out of the rental unit so that the Landlord and their family could move into the rental unit. The Mutual Agreement was to end the tenancy January 05, 2022, which did not occur because the Tenant provided the 10 day notice and moved out November 01, 2021. I find the circumstances as a whole clearly show this tenancy ended pursuant to the Notice and therefore the Tenant is permitted to seek compensation pursuant to section 51 of the *Act*. I do not find that the Mutual Agreement signed but not followed through with supersedes the Notice.

I accept the Landlord's testimony that they moved into the rental unit November 04, 2021, stayed for a week and a half and then moved out. I accept the Landlord's testimony that they moved out of the rental unit because their wife and children did not like living in the rental unit.

I find the Landlord followed through with the stated purpose of the Notice within a reasonable period after the effective date of the Notice. I acknowledge that the Notice does not have an effective date; however, the tenancy ended November 01, 2021, and the Landlord moved in three days later and therefore within a reasonable period.

I find the Landlord did not use the rental unit for the stated purpose of the Notice for at least six months because the Landlord acknowledged they moved out of the rental unit after a week and a half.

The Landlord submitted that extenuating circumstances applied, these being that their wife and children did not like living in the rental unit. These are not extenuating circumstances. Nothing **prevented** the Landlord and their family from remaining in the rental unit, they simply chose not to. The Landlord could equally have chosen to remain in the rental unit for at least six months. Whether the Landlord moved after a week and a half of living in the rental unit was completely within the Landlord's control. The circumstances relied on are nothing like the examples of extenuating circumstances set out in RTB Policy Guideline 50 such as death or a natural disaster. The circumstances relied on are exactly like the example in RTB Policy Guideline 50 of what is not an extenuating circumstance, that the Landlord and their family simply changed their mind.

I find the Landlord did not use the rental unit for the stated purpose of the Notice for at least six months and has not pointed to valid extenuating circumstances. I find section 51(2) of the *Act* applies and section 51(3) of the *Act* does not apply. I find the Landlord must pay the Tenant \$15,484.80 (\$1,290.40 x 12).

I note that part of the Application states:

b) \$1290.40 one month's rent as compensation for ending tenancy for Landlord's use. I was asked to sign documents with no explanation, by a third party (Landlord's father...), not being aware of what the documents were and afraid of not getting my deposit back. RTB 8 & 32

Neither party raised this aspect of the Application in the hearing. I decline to award this amount because I did not hear from the parties on it. This request is dismissed with leave to re-apply.

Summary

Given the above, I issue the Tenant a Monetary Order for \$15,584.80 being the \$100.00 security deposit and \$15,484.80 for section 51 compensation.

Conclusion

The Tenant is issued a Monetary Order for \$15,584.80 being the \$100.00 security deposit and \$15,484.80 for section 51 compensation. If the Landlord does not comply with the decision, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and 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 *Act*.

Dated: December 15, 2022

Residential Tenancy Branch