



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

While the tenants and their legal counsel, NU, attended the hearing by way of conference call, the landlord did not. I waited until 1:45 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenants, their legal counsel, the articling student, and I were the only ones who had called into this teleconference.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. All parties confirmed that they understood.

The tenants submitted a copy of the titled search for the property, which named two parties as the owners of the property. Counsel for the tenant believes that one of the parties, SX, is the owner and landlord of the property. Counsel noted that all previous documents and this tenancy was handled by the property management company, who were no longer acting on behalf of the landlord. Counsel served the landlord SX, with a copy of the hearing and dispute resolution package by way of registered mail on May 10, 2022, which counsel notes was picked up on May 19, 2022. A copy of the registered

mail receipts and tracking information was provided for the hearing. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenants' application and evidence for this hearing on May 15, 2022, 5 days after mailing. The landlord did not submit any written evidence for this hearing.

During the hearing counsel confirmed that SX was also known as CXX, which was one of the names on the land title. The tenants' application was therefore amended to include the landlord's legal name as noted on the land title.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in December 2016, and ended on March 15, 2022 after the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use on February 14, 2022 with an effective date of April 30, 2022. Monthly rent was set at \$2,080.75, payable on the first of the month. The tenants' security and pet damage deposits were returned at the end of the tenancy.

The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "The rental unit will be occupied by the landlord or the landlord's close family member: The father or mother of the landlord or landlord's spouse". A copy of the 2 Month Notice was submitted in evidence.

On April 16, 2022, the tenants discovered an online advertisement offering the top floor of the home for rent for \$2,700.00 per month. A copy of the advertisement and affidavit of TH was submitted in evidence. The tenants also submitted an affidavit from a neighbour, DG. DG affirmed that they live next door to the rental property, and on April 20, 2022 they noticed three men at the rental property, whom they believed were the new tenants. DG also affirmed that on May 7, 2022 a man introduced themselves as the tenant in the basement suite of the property. The tenant confirmed that they were not family members of the landlord.

The tenants are seeking compensation as the landlord did not use the home for the purpose indicated on the 2 Month Notice.

Analysis

Section 51(2) of the Act reads in part as follows:

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 light of the testimony and evidence before me, I am satisfied that the evidence shows that the landlord had re-rented the property although the 2 Month Notice to End Tenancy noted that the reason for ending the tenancy was for the parent(s) of the landlord to move in. By doing so, the landlord failed to comply with section 49(3) of the Act. The landlord did not respond to this application disputing this claim nor did the landlord provide an explanation or contrasting evidence in response to this application.

Accordingly, I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance. I issue a monetary award to the tenant in the amount of \$25,200.00.

As the tenants were successful in their claim, I find that they are also entitled to recover the filing fee for this application.

Conclusion

I issue a \$25,069.00 Monetary Order in favour of the tenants in compensation for the landlord's failure to comply with section 49(3) of the *Act*, and for recovery of the filing fee for this application.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: January 09, 2023

Residential Tenancy Branch