



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order in the amount of \$60,100 for the following:

I want compensation because my tenancy ended as a result of a 2 Month Notice to End Tenancy, and the landlord has not complied with the Act or used the rental unit/site for the stated purpose, and the filing fee.

The tenant attended the teleconference hearing, was affirmed and the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Thereafter the tenant was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). I refer to only the relevant evidence related to the facts and issues in this decision.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated June 15, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The tenant provided affirmed testimony that the Hearing Package was served on the landlord by registered mail. The registered mail tracking number was provided orally and has been included on the cover page of this decision for ease of reference. According to the Canada Post registered mail tracking website, the Hearing Package was successfully signed for and delivered on July 5, 2022.

Based on the unopposed evidence before me, I find the landlord was duly served on July 5, 2022, the date when the landlord signed for the Hearing Package. I also find this matter is unopposed by the landlord. Pursuant to RTB Rule 7.3, the hearing continued without the landlord present.

Preliminary and Procedural Matter

The tenant confirmed their email address during the hearing. The tenant confirmed their understanding that the decision would be emailed to both parties. The tenant was advised that any resulting monetary order, if any, will be sent by email to the appropriate party for service on the other party. The decision will also be sent by email to the landlord as the tenant included the email address for the landlord in their application.

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, is the tenant also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 15, 2020 and converted to a month-to-month tenancy after October 14, 2021. Monthly rent is listed as \$5,000 per month on the tenancy agreement. The tenant stated they vacated the rental unit based on the 2 Month Notice, but not after filing to dispute the 2 Month Notice, which ultimately did not proceed as the parties agreed on a new effective vacancy date of March 15, 2022, which I will address further below.

A copy of the 2 Month Notice was submitted in evidence. It is dated September 10, 2021 and includes an effective vacancy date of November 30, 2021. The tenant testified that they disputed the 2 Month Notice due to his girlfriend being pregnant at the time the 2 Month Notice was served. The tenant claimed the landlord extended the time for them to vacate until March 15, 2022 before the schedule dispute resolution hearing relating to the cancellation of the 2 Month Notice. The tenant confirmed the 2 Month Notice was never cancelled and they vacated the rental unit as a result of being served the 2 Month Notice.

The reasons listed on the 2 Month Notice states as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ 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).

Please indicate which close family member will occupy the unit.

☒ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

[reproduced as written]

The tenant testified that the tenants vacated the home on March 15, 2022 and that at the end of May 2022, the landlord listed the home for sale for \$5,699,000. The tenant also testified that the home was vacant and provided photo evidence to support that the home was vacant in April 2022. The photos support that the home was vacant.

The tenant also submitted a Realtor.ca listing of the rental property, which matched the rental unit address and photos, and supports a listing price of \$5,699,000. It also shows an open house is scheduled for June 4. The tenant stated the posting was added in late May 2022. The MLS number is also listed on the sale listing and has been included on the cover page of this decision for ease of reference.

Analysis

Based on the undisputed documentary evidence before me and the undisputed testimony of the tenant provided during the hearing, and on the balance of probabilities, I find the following.

12 times the monthly rent - Section 51(2) of the Act applies and states:

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 the landlord or purchaser, as applicable, 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**, except in respect of the purpose specified in section 49 (6) (a), **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]

The underlined portion places the onus of proof on the landlord and not the tenant. Based on the undisputed evidence before me, I find the tenant's application before me is successful as the landlord failed to meet the burden of proof to provide any evidence that they complied with the reason stated on the 2 Month Notice or that they had extenuating circumstances that prevented them from doing so under the Act.

As a result of the above, I find the tenant is entitled to \$60,000 in compensation from the landlord, comprised of 12 times the monthly rent of \$5,000 pursuant to section 51(2) of the Act. I find the evidence presented including the listing, photos and testimony supports that the property was not occupied within a reasonable period after March 15, 2022, the date the tenants vacated the rental unit based on the amended effective vacancy date of March 15, 2022, indicated above. I also find that the landlord listed the property for sale contrary versus occupying the rental unit, based on the evidence before me.

As the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100** pursuant to section 72 of the Act. Based on the above, I find the tenant has established a total monetary claim of **\$60,100** comprised of \$60,000 for 12 times the monthly rent for the landlord failing to comply with the reason stated on the 2 Month Notice and the \$100 filing fee.

Conclusion

The tenant's application is fully successful.

The tenant has been granted a monetary order pursuant to section 67 of the Act, in the amount of \$60,100 as indicated above. This order must be served on the landlord and may be filed in the appropriate court with jurisdiction to consider a monetary claim of \$60,100.

This decision will be emailed to the tenant and sent by regular mail to the landlord.

The monetary order will be emailed to the tenant only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 25, 2023

Residential Tenancy Branch