



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenant filed an Application for Dispute Resolution on May 12, 2022 seeking compensation for the Landlord ending their tenancy, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 26, 2023.

Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, both parties confirmed they received the prepared documentary evidence of the other. On this basis, the hearing proceeded.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”), pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided key details about the tenancy on their Application. They stated the tenancy started on September 15, 2020 and ended on February 28, 2022. As of the end of the tenancy they paid \$1,850 per month for rent, and this amount had not increased over the course of the tenancy.

The Tenant described the following events surrounding the end of this tenancy:

- the Landlord gave them a letter dated October 29, 2021 (as appears in their evidence) about a pending end of tenancy
- the Tenant informed the Landlord of the need for the correct form for a landlord ending a tenancy
- the Tenant again messaged the Landlord in December requesting the correct form, as appears in their evidence as a text message dated December 1, 2021
- the Tenant then picked up the Two-Month Notice (as appears in their evidence) from the Landlord's own mailbox
- the Tenant moved out on February 28, 2022.

The Landlord provided an affirmed affidavit, dated December 4, 2022, for this hearing. This was provided for the matter of ending the upstairs tenants' tenancy, who are named as the "Tenants" on that document. This provides the Landlord's basic position, and the same position re-stated in the hearing for this Tenant's rental unit, that at the time they issued the Two-Month Notice, they did not intend to sell the house. They intended to sell their own home that was not the rental unit property. Their own home did not sell after two months of being listed on the market. At the other upstairs tenants' urging, the Landlord listed the rental unit property for sale, "in or about May 2022." After this, the Landlord sold the rental unit property "in or about June 2022."

In the affidavit, the Landlord stated: "At all times and when we issued the Notice, [the Landlord] acted in good faith with the intention to move into the [rental unit property]."

In regard to this tenancy with this Tenant, the Landlord provided a "Certificate" that sets out the same fact pattern as above. The Landlord here intended their parent to move into this basement rental unit. This was due to the parent's "personal difficulties". Their parent moved into the rental unit "On or about 01 March 2022"; however by March 22, that parent "was living at both [their] family residents and the [rental unit property]." In this Certificate, the Landlord set out that "Eventually, we sold the [rental unit property]"

and I refer to the narrative of that fact as set out in my affidavit of 04 December 2022 for those details.”

The Landlord also provided a “Certificate” of the parent who took up occupancy in the rental unit. They had to temporarily stay at a hotel prior to moving into the rental unit on March 1, 2022.

In the hearing, the Landlord stated they did not know the legal process involved with ending a tenancy. They granted the Tenant “a little more time” and extended the two-month period to the end of February 2022, with the final month being rent-free.

In the hearing, the Tenant described visiting the rental unit after they moved out, on approximately March 20. This was to retrieve mail. They noticed a ‘for sale’ sign at the rental unit property, in late April or early May. They did not inquire on the sale status or sign. The Tenant also mentioned inconsistencies in the Landlord’s evidence provided for this hearing.

The Landlord clarified in the hearing that their parent moved into the rental unit in mid-March. The Landlord stated they had a plan to sell the rental unit property “by mid-April”. This was “sudden” and they were “desperate to sell it” and they had “no intention to sell [the rental unit] when [they] issued the [Two-Month Notice].” The Landlord clarified that they received an offer on the rental unit property on June 1 and sold it on that same day.

Analysis

The *Act* s. 49 allows for a landlord to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in the situation where a landlord issues a Two-Month Notice. This is covered in s. 51:

- (2) Subject to subsection (3) the landlord . . . must pay the tenant . . . 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 of 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 . . . from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord 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.

The onus is on the Landlord to prove that they accomplished the purpose for ending the tenancy. They may only be excused from these requirements in extenuating circumstances.

In this present scenario, I find the Landlord stated plainly that they sold the rental unit on June 1, 2022. As per s. 51(2)(b), I find the Landlord did not use the rental unit for the stated purpose for at least 6 months' duration. The sale was completed by the end of 3 months after the end of this tenancy. With this fact, I find the Landlord, via this section, must pay the Tenant an amount equal to 12 times the monthly rent.

The next question to resolve is whether extenuating circumstances prevented the Landlord from using the rental unit for the stated purpose for at least 6 months' duration. The onus to establish this is again on the Landlord.

The Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy – that which gives a statement of the policy intent of the legislation – provides that extenuating circumstances are those “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.”

I find the terms of the purchase of the rental unit property were *not* outside the Landlord's control. I find as fact that the Landlord here resorted to the sale of the rental unit property when they were not able to sell their own home. This was entirely within the Landlord's control at each step of that sales process.

For this reason, I find the Landlord has not overcome the burden of proof to show that extenuating circumstances prevented them from accomplishing the purpose/using the rental unit as was indicated on the Two-Month Notice.

I find this is a situation where s. 51(2) applies. The Landlord is not excused where they have not overcome the burden of proof to show that there were extenuating circumstances outside of their own control. For this, the Landlord must pay the

equivalent of 12 times the monthly rent payable under the tenancy agreement. This is the amount of \$22,200 as claimed by the Tenant.

Because the Tenant was successful in their Application, I grant the full amount of the \$100 Application filing fee to them.

Conclusion

Pursuant to s. 51 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$22,300. I provide the Tenant with this Order in the above terms, and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file the Order in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: January 30, 2023

Residential Tenancy Branch