



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 application for Dispute Resolution filed under the *Residential Tenancy Act* (the “Act”) on May 25, 2022. The Tenants applied for a monetary order for compensation related to a Notice to End Tenancy, and to recover the filing fee paid for the application. The matter was set for a conference call.

Both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified that the Landlord had been served the Application for Dispute Resolution and Notice of Hearing documents by Canada Post Registered mail, sent on May 29, 2022. The Tenants provided a tracking number for the mailing into evidence. Therefore, I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Applicant was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Are the Tenants entitled to monetary compensation from the Respondent related to a Notice to End Tenancy?
- Are the Tenants entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenants testified that their tenancy began on January 1, 2021, as a one-year fixed term tenancy that rolled into a month-to-month after the end of the initial fixed term. The Tenants also testified that rent in the amount of \$1,700.00 was to be paid by the first day of each month, and at the outset of the tenancy, the Tenants had paid an \$850.00 security deposit. The Tenants submitted a copy of the tenancy agreement into documentary evidence.

The Tenants testified that they were served with a Two-Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") dated December 15, 2021. The reason checked off by the Landlord within the Notice was as follows:

- 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 child of the landlord or landlord's spouse

The Tenants testified that they moved out of the rental unit, in accordance with the Notice on February 28, 2022, and that the Landlord returned the security deposit to the Tenants in accordance with the *Act*. The Tenants submitted a copy of the Notice into documentary evidence.

The Tenants testified that when the tenancy ended, they decided to move in with family that lived on the same street as this rental unit and that on April 29, 2022, they witnessed the rental unit being demolished. The Tenants submitted 11 pictures of the rental property taken between March 6 to April 29, 2022, into documentary evidence.

The Tenants testified that as of the date of these proceedings, the new house build is still ongoing at the rental unit site. The Tenants are requesting compensation for the rental property not being used as indicated on the Notice.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51(2) of the *Act*, which states the following:

Tenant's compensation: requirement to vacate

51.1 (1) Subject to subsection (2) of this section, if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term, 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 date the tenancy ended, to satisfy the prescribed circumstance, or*
- (b) the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.*

(2) The director may excuse the landlord from paying the tenant the amount required under subsection (1) if, in the director's opinion, extenuating circumstances prevented the landlord from

- (a) satisfying, within a reasonable period after the date the tenancy ended, the prescribed circumstance, or*
- (b) using the rental unit in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.*

I accept the undisputed testimony of the Tenants, supported by their documentary evidence, that the Landlord demolished the rental unit on April 29, 2022, two months after the tenancy had ended. I find that the Landlord breached of sections 49 and 51 of

the *Act* when they demolished the rental unit instead of using the rental unit for the purpose indicated on their Notice.

Therefore, pursuant to section 51 of the *Act*, I find that the Tenants have successfully proven they are entitled to compensation for the Landlord's breach of the *Act*. I award the Tenants compensation in the amount of **\$20,400.00**, consisting of the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

I grant the Tenants a monetary order in the amount of \$20,500.00, consisting of \$20,400.00 in compensation and \$100.00 in the recovery of the filing fee paid for these proceedings.

Conclusion

I grant the Tenants a Monetary Order in the amount of \$20,500.00. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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 24, 2023

Residential Tenancy Branch