



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants April 06, 2022 (the “Application”). The Tenants applied as follows:

- For compensation for monetary loss or other money owed
- For compensation because the tenancy ended as a result of a two, four, or 12 Month Notice to End Tenancy, and the Landlord has not complied with the Act or used the rental unit for the stated purpose

The Tenants appeared at the hearing. A.D. and G.D. (the “Agents”) appeared at the hearing for the Landlord. 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 Agents confirmed receipt of the hearing package. The Agents testified that they did not receive the Tenants’ evidence. The only evidence at issue was a screenshot of “Notes”. The Tenants acknowledged they did not serve the screenshot on the Landlord. I find the Tenants did not comply with rule 3.14 of the Rules. I heard the parties on whether the screenshot should be admitted or excluded. I exclude the screenshot pursuant to rule 3.17 of the Rules because I find it would be unfair to the Landlord to consider it when they have not seen it and could not respond to it.

The Tenants confirmed receipt of the Landlord's evidence and confirmed there are no service issues.

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

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to compensation because the tenancy ended as a result of a two, four, or 12 Month Notice to End Tenancy, and the Landlord has not complied with the Act or used the rental unit for the stated purpose?

Background and Evidence

The Tenants sought \$1,300.00 and \$15,600.00, both pursuant to section 51 of the *Residential Tenancy Act* (the "*Act*") in relation to a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 27, 2021 (the "Notice").

The parties agreed on the following. There was a written tenancy agreement between them. The tenancy started in January of 2018, was for a fixed term and then became month-to-month. Rent at the end of the tenancy was \$1,300.00 per month. The tenancy ended August 06, 2021.

The Notice was submitted. The effective date of the Notice was September 30, 2021. The grounds for the Notice were that the rental unit would be occupied by the Landlord and/or Landlord's spouse.

\$1,300.00 Compensation

The Tenants sought compensation equivalent to one month's rent pursuant to section 51(1) of the *Act*.

The Tenants testified that they never received the Notice and only received a text message about vacating; however, the Tenants accepted at the hearing that the Notice was properly served on them. The Tenants testified that they paid August rent. The

Tenants testified that they verbally told the Landlord they were moving earlier than the effective date of the Notice. The Tenants testified that they verbally told the Landlord on August 15, 2021, that they were going to move September 01, 2021.

The Agents testified that the Notice was served on the Tenants July 27, 2021, by posting it to their door and emailing it to them. The Agents testified that they did not know the Tenants were moving early and that the Tenants never provided notice. The Agents agreed the Tenants paid August rent. The Agents submitted that it was September rent that was free for the Tenants.

\$15,600.00 Compensation

The Tenants sought compensation equivalent to 12 times the monthly rent pursuant to section 51(2) of the *Act*.

The Agents testified as follows. The rental unit address is a house with upper and lower units. The upper unit has three bedrooms, and the lower unit has two bedrooms. Prior to issuing the Notice, the Landlord and their spouse were using one bedroom in the upper unit, G.D. and their spouse were using the second bedroom in the upper unit and A.D. and G.D.'s son were sharing the third bedroom in the upper unit. The Tenants were occupying the entire lower unit.

The Agents further testified as follows. A.D. got married and their spouse was moving into the house and therefore the Notice was issued. The Tenants moved out August 06, 2021. The Landlord and their spouse moved from the upper unit into one of the bedrooms in the lower unit. The second bedroom in the lower unit was used as a guest bedroom. This move took place so that A.D. and their spouse could use one of the bedrooms in the upper unit and G.D.'s son could have their own bedroom in the upper unit.

The Agents further testified as follows. From January to April of 2022, N.K., a visitor, used the second bedroom in the lower unit. The Landlord and their spouse were still using the other bedroom in the lower unit. In April of 2022, G.D. and their family moved out of the country and two rooms in the upper unit became available. Given this, the Landlord and their spouse moved back to the upper unit. At the end of April, the Agents listed the lower unit for rent and re-rented it for June 01, 2022.

The Agents submitted that the Landlord complied with the Notice because the Landlord and their spouse used a bedroom in the lower unit until April of 2022. In response to the Tenants' materials, the Agents testified that it was N.K. the Tenants saw and spoke to on the property as stated in their materials.

The Tenants testified as follows. Tenant M.Y. was in the area of the rental unit a lot after the Tenants moved out. Tenant M.Y. would still see the Landlord and their spouse on the top deck of the house tending to plants and the garden. Tenant M.Y. saw a woman and their child walk to the lower unit. The Tenants were told the Landlord and their spouse needed the basement room because they could not walk up and down the stairs. Tenant M.Y. spoke to N.K. at the lower unit and N.K. said they were living in the rental unit. N.K. did not mention anyone else living in the lower unit and N.K. told Tenant M.Y. only them and their son were living in the lower unit. Tenant T.S. also attended the rental unit and spoke to N.K. who said T.S. had to go to the front door to talk to the Landlord. N.K. told Tenant T.S. it was only them living in the lower unit. Tenant T.S. did go to the front door and the Landlord answered it which shows the Landlord was still in the upper unit. Tenant T.S. went to the rental unit a further time and again N.K. said it was only them in the lower unit.

The Tenants submitted that the Landlord and their spouse never used a bedroom in the lower unit, only N.K. lived in the lower unit and the Landlord and their spouse remained living upstairs.

In reply, the Agents testified that the Landlord and their spouse had a right to come into the upper unit while using the bedroom in the lower unit. The Agents denied that they ever told the Tenants the Landlord and their spouse could not walk up the stairs.

The Tenants did not submit further evidence to support their position about the Notice.

The Landlord submitted the following further relevant evidence:

- Text messages between the parties
- A signed statement from N.K. about staying at the house in the lower unit as a guest and the Landlord and their spouse using one of the bedrooms in the lower unit
- Documents related to N.K. visiting Canada
- Documents showing A.D.'s spouse entering Canada October 20, 2021

- A tenancy agreement showing the rental unit was re-rented on May 29, 2022, for June 01, 2022
- Documents to support that G.D. moved out of the country around April of 2022
- Craigslist history showing rental ads posted May 27, 2021, April 22, 2022 and May 23, 2022, the May posting appears to be for a different unit

Analysis

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 50 of the *Act* states:

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49...the tenant may end the tenancy early by

- (a) giving the landlord **at least 10 days' written notice to end the tenancy** on a date that is earlier than the effective date of the landlord's notice or director's order, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the **rent due to the effective date of the tenant's notice**, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord **must refund any rent paid for a period after the effective date of the tenant's notice**.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

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:

(1) A tenant who receives a notice to end a tenancy under section 49...is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement...

(1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

(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.

(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.

RTB Policy Guideline 50 addresses section 51 of the *Act*. The onus is on the Landlord to prove they followed through with the stated purpose of the Notice for at least six months.

\$1,300.00 Compensation

In relation to the Tenants providing notice ending the tenancy early, the dates provided by the parties do not make sense as the parties agreed the Tenants moved out August 06, 2021; however, the Tenants testified that they told the Landlord August 15th that they would move September 1st. Even though the Tenants were required to give written notice ending the tenancy early, I find the Landlord must have known as of August 06, 2021, that the Tenants were ending the tenancy early because the parties agreed the Tenants moved out on this date. The Tenants were permitted to end the tenancy early pursuant to section 50(1) of the *Act*. I consider August 06, 2021, to be the date the Tenants gave notice because I am not satisfied they gave notice earlier given the lack of compelling evidence to support this. I find the Tenants ended the tenancy for August 16, 2021, which was allowed under section 50(1) of the *Act*.

There is no issue that the Tenants paid full rent for August because the parties agreed on this. The Tenants were only required to pay rent up until August 16, 2021, and were also entitled to the equivalent of one month's rent pursuant to section 51(1) of the *Act*. Given this, the Tenants are entitled to the following:

- $\$1,300.00 / 31 \text{ days} = \$41.93 \times 15 \text{ days not living in rental unit} = \628.95
- $\$1,300.00$ pursuant to section 51(1) of the *Act*
- Total = $\$1,928.95$

\$15,600.00 Compensation

In relation to the compensation request pursuant to section 51(2) of the *Act*, I accept the version of events as stated by the Agents for the Landlord because I find it is supported by sufficient compelling documentary evidence. I find the documentary evidence supports numerous aspects of the Agent's position about what occurred with the rental unit after the effective date of the Notice until April of 2022, more than six months later. I find the documentary evidence reliable and credible and do not have concerns about the testimony of the Agents. I find the Landlord has proven that them and their spouse used one of the bedrooms in the rental unit after the Tenants moved out until April of 2022. I also find the Landlord has proven they did not rent out any part of the rental unit until June 01, 2022, more than six months after the effective date of the Notice. I find the Landlord followed through with the stated purpose of the Notice and therefore extenuating circumstances are not an issue.

I acknowledge that the Landlord has the onus to prove they followed through with the stated purpose of the Notice for at least six months and I find that the Landlord has done so. However, I do note that the Tenants did not submit compelling evidence to call into question the Agent's testimony or to support their own position. It seems completely understandable that the Landlord and their spouse would still be in and use every part of the house and property even when using a bedroom in the lower unit because their family continued to live throughout the house. Given this, I do not find that sightings of the Landlord or their spouse other than in the lower unit say anything about whether the Landlord and their spouse used a bedroom in the lower unit. Further, the presence of N.K. has been adequately explained by the Agents and documentary evidence. I note that the Tenants have simply relayed what they say N.K. told them versus providing compelling evidence of what N.K. told them such as an audio or video recording of the conversation.

Given the above, I find the Landlord followed through with the stated purpose of the Notice and did so for at least six months and therefore the Tenants are not entitled to compensation pursuant to section 51(2) of the Act. This request is dismissed without leave to re-apply.

Summary

Given the above, the Tenants are awarded \$1,928.95, and are issued a Monetary Order in this amount.

Conclusion

The Tenants are entitled to \$1,928.95 and I issue them a Monetary Order in this amount. This Order must be served on the Landlord and, 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: January 10, 2023

Residential Tenancy Branch