



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 by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) in which the Tenant seeks:

- compensation from the Landlord related to a Notice to End Tenancy for Landlord’s Use of Property dated September 3, 2021 (the “2 Month Notice”) pursuant to section 51(2); and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord, a translator for the Landlord (“JD”) and the Tenant attended at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Tenant stated she might call a witness during the hearing but the witness was not called.

The Tenant stated she served the Notice of Dispute Resolution Proceeding and her evidence (“NDRP Package”) on the Landlord by registered mail on April 29, 2022. The Tenant provided the Canada Post tracking number for service of the NDRP Package on the Landlord to corroborate her testimony. The Tenant stated the NDRP Package was unclaimed and Canada Post returned it to her on May 27, 2022. The Landlord stated he did not know who the registered mailing was from. The Tenant stated she served the NDRP Package on the Landlord in person, with two witnesses, on September 8, 2022. The Landlord acknowledged he received the NDRP Package in person from the Tenant. I find the NDRP Package was served on the Landlord by registered mail, as well as in

person, in accordance with the provisions of sections 88 and 89 of the Act. Pursuant to section 90, I find the Landlord was deemed to have received the NDRP Package by registered mail on June 1, 2022, being 5 days after posting by the Tenant.

The Landlord stated he served his evidence on the Tenant by registered mail on November 8, 2022. The Landlord submitted into evidence a copy of the Canada Post receipt and tracking number to corroborate his testimony on service of his evidence on the Tenant. The Tenant initially stated she did not receive the Landlord's evidence package. When I asked, the Landlord provided me with the address he used to send his evidence by registered mail. The address he provided matched the address provided by the Tenant for service of documents in the Application. The Tenant stated the notice from Canada Post stated it would be held until November 29, 2022 and she was not there at the time. The Tenant made the Application and provided her address for service by the respondent Landlord and the Residential Tenancy Branch ("RTB"). The Tenant ought to have anticipated the Landlord might serve documents on her using the address for service she provided. The Tenant had the option of providing another person with authorization to pick up any registered mail packages. As such, I find the Landlord duly served his evidence on the Tenant by registered mail in accordance with the provisions of section 88 of the Act. Pursuant to section 90, I find the Tenant was deemed to have received the Landlord's evidence on November 13, 2022, being 5 days after posting by the Landlord.

Preliminary Matter – Testimony of JD Given First

At the outset of the hearing, the Landlord stated he would be calling JD, his son, as a witness. I requested that JD leave the room until it was time for him to give his testimony. However, during the early part of the hearing, it became clear that the Landlord was having difficulties communicating in English. I requested the Landlord to call JD into the room. I asked if JD if he was fluent in English and the Landlord's first language and he stated he was. In order to allow JD to assist in translation for the Landlord, I requested JD provide his affirmed testimony first so that it would not be tainted by hearing the testimony of the Tenant. The Tenant did not object to JD translating for the Landlord.

Issues to be Decided

Is the Tenant entitled to:

- compensation from the Landlord in relation to the 2 Month Notice?
- recover the filing fee of the Application?

Background and Evidence

While I have turned my mind to all 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 principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on or about July 27, 2012, on a monthly basis, with rent of \$700.00 per month. Based on the testimony of the parties, I find there was a residential tenancy between the Landlord and Tenant and that I have jurisdiction to hear the Application.

The Tenant submitted a copy of the 2 Month Notice. The 2 Month Notice stated the reason for ending the tenancy was the child of the landlord or the Landlord's spouse would be occupying the rental unit. The 2 Month Notice stated the Tenant was required to move out of the rental unit by December 1, 2021. The Tenant stated she vacated the rental unit on November 30, 2021.

JD stated he is a son of the Landlord and is the child referred to in the 2 Month Notice. JD stated he moved into the rental unit about one month after the Tenant vacated the rental unit on November 31, 2021. JD stated the rental unit was pretty dirty after the Tenant vacated it. JD stated the Landlord performed renovations on the rental unit including cleaning the rental unit, painting the roof, taking down one room and putting a new railing up. The Tenant stated it took some time to get furniture for the rental unit. When I pressed JD to tell me how long it took before he moved into the rental unit, he stated "about a month". JD stated the Tenant used to drive by at all hours of the day and night and it was like harassment. JD stated there are cameras at the rental unit and the Tenant would park outside the rental unit. The Landlord submitted into evidence five photos showing the Tenant's car parked on the road outside the rental unit to corroborate JD's testimony. JD stated that, even if he wanted to move into the rental unit within 15 days after the effective date of the 2 Month Notice, he did not have any furniture for the rental unit. JD stated the irrigation system was not working because of

the Tenant and it required repairs. When I asked, JD confirmed that water services in the rental unit were working when the Tenant vacated the rental unit.

The Tenant stated the rental unit had two bedrooms and two bathrooms when she was living in it. The Tenant stated JD did not move into the rental unit. The Tenant stated she went by the rental unit many times after she vacated it to see if anyone was using it. The Tenant submitted into evidence numerous photos of the rental unit taken at various times after she vacated the rental unit to demonstrate the rental unit appeared to be unoccupied for many months after the effective date of the 2 Month Notice. Some of the photographs showed snow on the ground without any footprints or tire tracks that would indicate someone was accessing the rental unit. The Tenant stated the Landlord used the rental unit for storage. The Tenant stated she, with the assistance of another person, put the gate up before the end of the tenancy. The Tenant stated JD was not living in the rental unit even in September and October 2022 because the lights were off at nighttime.

Analysis

The Tenants seek \$8,400.00 in compensation pursuant to section 51(2) of the Act based that the Landlord, or a close member, failed to use the rental unit for the stated purpose in the 2 Month Notice. The 2 Month Notice was issued pursuant to section 49(5) of the Act which states:

- (5) A landlord may end a tenancy in respect of a rental unit if
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Subsections 51(2) and 51(3) of the Act state:

- 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 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, 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.
- (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, and
 - (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[emphasis in italics added]

Pursuant to rule 6.6 of the RoP, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the standard of proof. In these circumstances, subsection 51(2) of the Act requires that the Landlord establish the rental unit has been used by the Landlord, or a close family member, for at least 6 months' duration, beginning within a reasonable period after the effective date of the 2 Month Notice. The effective date of the 2 Month Notice was December 1, 2021. The parties agreed the Tenant moved out of the rental unit on November 30, 2021. The 2 Month Notice stated the child of the Landlord or the

Landlord's spouse would be occupying the rental unit after the effective date. Section 51(2) states the Landlord must pay the Tenant compensation that is equivalent to 12 months rent if the Landlord do not use the rental unit for the purpose stated in the 2 Month Notice.

Residential Tenancy Policy Guideline 50 ("PG 50") addresses the requirements for a landlord to pay compensation to a tenant under the Act when a landlord or purchaser, as applicable, has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given. PG 50 states in part:

Reasonable Period

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

[...]

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are

circumstances 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*. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement. The following are probably not extenuating circumstances:
 - A landlord ends a tenancy to occupy the rental unit and then changes their mind.
 - A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

[...]

[emphasis in italics added]

As stated in PG 50, a reasonable period of time is 15 days after the effective date of a Two Month Notice to End Tenancy. JD admitted he did not move into the rental unit until about one month after the effective date of the 2 Month Notice. As such, I find the rental unit was not used for the state purposed within 15 days of the effective date of the 2 Month Notice. JD stated that renovations were performed on the rental unit such as cleaning the rental unit, painting the roof and putting a new railing up. JD stated it took some time to get furniture for the rental unit. JD stated that the renovations included “taking down a room”.

Where a landlord intends perform repairs or renovations to a rental unit after giving a tenant a notice to end tenancy so that he, or a close family member, may occupy the rental unit, the landlord has various options. If the rental unit requires repairs as a result of normal wear and tear to the rental unit or as a result of damages caused by a tenant or past tenants, then the landlord has the option of serving the existing tenant with a Two Month Notice to End Tenancy. In these circumstances, the landlord must complete the repairs as soon as possible and then take occupancy so that the delay past the 15 day period may be extended as contemplated by PG 50. In these circumstances, the landlord should be prepared to demonstrate that the rental unit was unsuitable for

occupation and submit evidence to the RTB to demonstrate why it took so long to complete the repairs and that the delay in occupation by the landlord, or close family member, was reasonable in the circumstances. If the landlord contemplates renovations to change the configuration of the rental unit, then the landlord may serve the tenant with a Two Month Notice to End Tenancy but the landlord must ensure that those renovations are completed within 15 days so that the landlord, or close family member, can occupy the rental unit within the 15 day period contemplated by PG 50. If the landlord intends to perform renovations that cannot be performed within a reasonable period of time, then the landlord, or the close family member must move in within 15 days and be prepared for the renovations to be performed while the landlord, or close family member, are occupying the rental unit. If the landlord believes the renovations are more extensive and will take a longer period of time than the reasonable period of time contemplated by PG 50 and the landlord does not want to occupy the rental unit during the period of renovations, then the landlord has the option of seeking approval from the RTB to serve the Tenant with a Four Month Notice for Renovations.

In the present case, the Landlord served the 2 Month Notice on the Tenant that stated the purpose for ending the tenancy was that a child would occupy the rental unit. JD stated he did not move into the rental unit until at least one month after the effective date of the 2 Month Notice. The Landlord did not submit copies of completed move-in and move-out condition inspection reports that were performed with the Tenant to demonstrate the rental unit required repairs. As such, there is no evidence before me to demonstrate the rental unit was in a condition that required repairs taking more than 15 days to complete in order to make the rental unit suitable for occupation. Taking down a room was not a repair that was required to be performed by the Landlord as a result of the Tenant, or previous tenants, living in the rental unit but was a renovation that was made to accommodate JD. As such, I find that the circumstances do not justify the Landlord having more than 15 days before JD occupied the rental unit. Based on the foregoing, I find the Landlord, on a balance of probabilities, has not established that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the 2 Month Notice.

The Landlord did not provide any testimony or evidence to demonstrate there were matters that could not be anticipated or were outside a reasonable person's control that prevented him from accomplishing, within a reasonable period after the effective date of the 2 Month Notice, the stated purpose for ending the tenancy and using the rental unit for that stated purpose for at least 6 months' duration, starting within a reasonable period after the effective date of the 2 Month Notice. As such, it is my opinion there were no extenuating circumstances that excuse the Landlord from paying the

compensation required under subsection 51(2) of the Act. Based on the above, I order the Landlord to pay the Tenant compensation equal to 12 times the monthly rent of \$700.00, being \$8,400.00.

As the Tenant has been successful in the Application, I order the Landlord to reimburse the Tenant for the filing fee of the Application pursuant to section 72 of the Act.

Conclusion

The Tenant is granted a Monetary Order for \$8,500.00 calculated as follows:

Item	Amount
Compensation equal to 12 Months' Rent (12 x \$700.00)	\$8,400.00
Reimbursement of Filing Fee for Application	\$100.00
TOTAL	\$8,500.00

The Tenant is provided with this Order on 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 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 21, 2023

Residential Tenancy Branch