



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This original hearing convened on July 26, 2022, by teleconference to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice).

At the original hearing, the tenants attended, and the landlord did not. Another arbitrator conducted a full hearing and heard the merits of the tenants' application. The original arbitrator granted the tenants' monetary claim in the amount of \$15,420.

The landlord filed an application for review consideration and another arbitrator granted the landlord's application for review consideration, and the landlord a new hearing.

At this hearing, the tenants, the landlord's son and the landlord's grandson/agent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were 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. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?

Background and Evidence

The tenancy began on October 1, 2016 and ended on September 30, 2020. The monthly rent at the end of the tenancy was \$1,285. Filed in evidence was a written tenancy agreement between the parties.

The evidence showed that the landlord issued the tenant a 2 Month Notice, which was dated July 28, 2020, and listed an effective date of October 1, 2020. The tenants vacated in response to the 2 Month Notice.

The reasons for ending the tenancy stated on the Notice were that 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). Filed in evidence by the tenant was the 2 Month Notice.

The tenant's monetary claim is \$15,420, equivalent of 12 times the monthly rent payable under the tenancy agreement, at the end of the tenancy, for receiving the landlord's 2 Month Notice.

The tenant wrote in their application the following:

We were given a notice to end tenancy in July 2020. It is now Dec 2021 and we have been out of the property for over a year. No one related to the landlord is using the property and they have done no improvements or anything else in order to move themselves or family into the unit. Additionally they placed an ad to rent it out again for \$800 more than we paid less than two weeks after our tenancy ended.

[Reproduced as written]

In response to the tenants' claim, the landlord proceeded first in the hearing.

The landlord's agent, AJ, testified to the following: The 2 Month Notice was issued to the tenants so that the landlord and wife could move into the home. However, the landlord never moved into the home because the landlord was 80 years old and his wife was in her late 70's. For this reason, they could not navigate the stairs and did not know their limitations. The landlord was diagnosed with "gait apraxia" 4-5 years ago and his grandmother has arthritis. The landlord and spouse misjudged what they were capable of doing anymore and AJ, who is a critical care nurse, did not think it was safe to live there.

Continuing on, AJ testified that when a family dispute arose, MJ, the landlord's son, moved into the rental unit on October 15, 2020 and lived there until June 2021, 8 months after the tenancy ended and the dispute was over.

The landlord provided a written statement, which in part, explained the following:

[redacted] and his wife [redacted] planned to move back to [redacted]th st due to a family dispute. After DP moved out JJ and wife HJ attempted to move in but were unable to climb the 14 steep steps leading to the main living area and bedrooms. They could not afford to make the house accessible or safe for themselves due to being elderly. JJ is also diagnosed with a balance disorder called gait apraxia and requires a walker to mobilize. The grandson [redacted] who is a critical care registered nurse deemed it unsafe for JJ to safely move in. Due to the family dispute [redacted] moved to [redacted]th st on October 15, 2020. Furthermore, MJ moved out of [redacted]th on June 30, 2021 after the family dispute was resolved.

Due to MJ being low income he could not afford to pay rent. With the consent of JJ, MJ was granted permission to have roommates to cover the costs.

On November 1, 2020, [redacted] and her family moved in with [redacted] as a roommate at [redacted]th st. The tenancy agreement was signed by all parties on October 21, 2020. Evidence has been submitted in the form of a tenancy agreement in this file.

A statement by AK has been provided as evidence stating her and her family moved in with MJ as roommates on November 1st 2020.

[Reproduced as written except for anonymizing personal information to protect privacy]

Additional evidence filed by the landlord included a written tenancy agreement signed by the landlord, JJ, with MJ and the alleged friend, AK, as co-tenants, and utilities bills in the landlord's name.

Tenant's response

The tenant testified to the following: The tenant saw no evidence of MJ living in the former rental unit, never saw him moving in or out, or evidence of a vehicle. The tenant who moved into the rental unit was living there with her husband and children, not MJ. As far as the utility bills provided in evidence by the landlord, they were always in the landlord's name, so nothing changed. Additionally, MJ told the tenant if they paid \$1,800, they could stay.

Filed in evidence was a screen shot of an on-line ad showing the rental unit for rent for \$2,000, which included utilities. The description noted that the ad was posted on October 6, 2020.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In the case before me, the undisputed evidence is that the landlord issued the tenants a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, for a listed effective move-out date of October 1, 2020.

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

The 2 Month Notice was given to the tenants listing that the landlord or close family member intended to occupy the rental unit. The landlord's evidence and the landlord's agent confirmed that the intent behind the 2 Month Notice was for the landlord and spouse to move into the rental unit.

Section 51(2) provides that if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or if 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, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the undisputed evidence is that the landlord or spouse have not occupied the rental unit since the effective date of the Notice of October 1, 2020, I find the landlord must pay the tenants the amount of \$15,420, the equivalent of 12 times the monthly rent of \$1,285.

Section 51(3) of the *Act* authorizes me to excuse the landlord from paying the tenants the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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.

Tenancy Policy Guideline 50E outlines 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.

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.

In these circumstances, I find the landlord submitted insufficient evidence to show extenuating circumstances. The landlord issued the 2 Month Notice on July 28, 2020, and I find there was no proof of their physical disability worsening in the two months after the issuance of the Notice. The agent confirmed that the gait apraxia was diagnosed 4-5 years ago and I therefore find this condition, known at the time, did not

become a factor in the succeeding two months. Although the agent mentioned the ages of the landlord and spouse, I find this was not an extenuating circumstance, as they would have only aged 2 months.

Although the landlord's agent confirmed that the 2 Month Notice was issued so that the landlord and spouse could occupy the rental unit, the agent then attempted to show that the landlord's son occupied the rental unit in the landlord's place.

Tenancy Policy Guideline 50 applies and provides the following:

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy.

Apart from that, even if I were to accept that the landlord's son could be substituted in the landlord's place, which I do not, the landlord's own evidence shows that the landlord entered into a new tenancy agreement on October 21, 2020, with another, non-family tenant, with MJ listed as a co-tenant, with that tenant, AK, still residing in the rental unit and MJ not residing there. What this means is that the other tenant, AK, was granted exclusive possession and use of the rental unit, as a co-tenant, as co-tenants have equal rights under their tenancy agreement and are jointly and severally liable for meeting the terms of the tenancy agreement. I find this proves the landlord re-rented the rental unit for an increased monthly rent of \$2,000 and further find the rental unit was not used for the stated purpose listed on the 2 Month Notice.

As I have found the landlord must pay the tenants compensation equal to 12 times the monthly rent due under the tenancy agreement, or \$1,285, and as I have found insufficient evidence of extenuating circumstances preventing the landlord from occupying the rental unit, and as I have further found that the landlord re-rented the rental unit to a non-family member 20 days after the effective date of the Notice, I find the tenants have established a monetary claim of \$15,420.

For this reason, I **confirm** the original Decision of the arbitrator, dated August 17, 2022, which granted the tenants a monetary order of \$15,420, also dated August 17, 2022. The monetary order issued to the tenants, in the amount of \$15,420, is **confirmed and is now fully enforceable** pursuant to sections 62(3) and 82(3) of the Act.

The landlord is reminded that they can be held liable for all costs related to enforce the monetary order including court fees.

Conclusion

Following the review hearing, the original Decision and monetary order of August 17, 2022, were confirmed and they remain valid and enforceable.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 20, 2023

Residential Tenancy Branch