



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenant MJ (the tenant) and landlord FK (the landlord) attended the hearing. The landlord was assisted by agent MD. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue - Service

The landlord confirmed receipt of the notice of hearing and the evidence in December 2022.

The tenant confirmed receipt of the landlord's response evidence and that he had enough time to review it.

Based on the undisputed testimony, I find the parties served the materials in accordance with section 89(1) of the Act.

The tenant affirmed he served a new evidence package containing a flash drive on January 29, 2023 by leaving it in the landlord's mailbox. The tenant did not serve the digital evidence details form (RTB 43).

The landlord stated she received the new evidence package but that she could not access the digital files.

Rule of Procedure 3.10.4 required the parties to serve digital evidence with form RTB43.

As the tenant did not serve the new evidence package with form RTB43, I excluded the new evidence package.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order in an amount equivalent to twelve times the monthly rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties and witnesses, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered."

Both parties agreed the tenancy started on February 01, 2021 and ended on May 20, 2022. Monthly rent when the tenancy ended was \$2,500.00, due on the first day of the month. The landlord collected and returned a security deposit.

The tenant allowed the landlord to use the rental unit on May 20, 2022, but only removed all his belongings on June 01, 2022.

Both parties also agreed the landlord served and the tenant received a two month notice to end tenancy for landlord's use (the Notice) in April 2021. The landlord served the Notice because she planned to occupy the rental unit with her partner and children.

The tenant submitted a copy of the April 14, 2022 Notice into evidence. It states the landlord will occupy the rental unit. The effective date was June 09, 2022.

Agent MD, the landlord's son, testified the landlord renovated the rental unit and moved to the rental unit in September 2022. Later MD said the landlord moved to the rental unit on September 10, 2022 and that the landlord is currently living in the rental unit.

The landlord affirmed that she renovated the rental unit and moved to the rental unit on September 13, 2022.

Agent MD and the landlord stated they offered a new rental unit for the tenant in Surrey, not the rental unit occupied by the tenant. The landlord texted the tenant on September 20, 2022:

Are you looking for rent the house? We fully renovated and extended the house with 5 bedrooms and 4 full bathrooms. Let me know if you still interested I was like I can ask you first. But this time will be \$5,000.00 rent. It's with AC unit and fireplace everything brand new. If you want you can come look at it. Am putting on rent add in this week. So just telling you advance.

The landlord testified that she did not explain in the text message that she was offering a rental unit in Surrey because English is not her first language and that the Surrey unit was also renovated.

The tenant said that he understood the landlord offered to re-rent the same rental unit, which is not located in Surrey.

The tenant affirmed the rental unit was in good condition when the tenancy ended and that there was a water leak in one bedroom in the basement. The water leak happened between May 20 and June 01, 2022 and there was no roof damage, as the leak originated from old pipes.

The landlord stated that she renovated the "whole house" from June 01 to September 2022 because there was a water leak, the roof was damaged and because she wanted

a new kitchen and a fully renovated house. The landlord testified that only two people worked on the renovation and some products needed for the renovation were not available, so it took a longer time than expected to renovate the rental unit.

Analysis

Section 49 of the Act states:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(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.

Rule 6.6 of the Residential Tenancy Branch Rules (RTB) of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed:

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The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 51(2) of the Act states:

(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] 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.

[...]

(2) Subject to subsection (3), **the landlord** or, if applicable, the purchaser who asked the landlord to give the notice **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** or purchaser, as applicable, **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.

(emphasis added)

I accept the undisputed testimony that the landlord served the Notice in April 2022.

Based on the Notice, I find the landlord must have occupied the rental unit from June 10 to December 09, 2022, as the Notice's effective date was June 09, 2022.

Per Rule of Procedure 6.6 and section 51(2) of the Act, the landlord has to onus to prove that the stated purpose for ending the tenancy was accomplished.

RTB Policy Guideline 50 states:

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.

RTB Policy Guideline 2A states:

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

[...]

E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE

If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice

the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

Based on the September 20, 2022 text message, I find the landlord offered the same rental unit to the tenant, asking for a rent 100% higher because “we fully renovated and extended the house”. The landlord was able to clearly communicate in English during the hearing.

I accept the landlord’s uncontested testimony that she moved to the rental unit on September 13, 2022, more than 3 months after the Notice’s effective date.

The landlord’s testimony about the length of time necessary for the renovation was vague. The landlord did not explain which products were not available or why the landlord did not hire more workers to complete the renovation faster.

I find the tenant’s testimony about the water leak was more detailed and convincing than the landlord’s testimony.

The landlord said she wanted to renovate the “whole house” and did so between June 01 and mid-September 2022.

Based on the above, I find the landlord failed to prove, on a balance of probabilities, that she moved to the rental unit within a reasonable time after the Notice’s effective date.

As such, per section 51(2) of the Act, the tenant is entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenant a monetary award in the amount of \$30,000.00 (\$2,500.00 x 12).

As the tenant was successful, I authorize the tenant to recover the \$100.00 filing fee.

Thus, the tenant is entitled to a monetary award in the amount of \$30,100.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenant a monetary award in the amount of \$30,100.00.

The tenant is provided with this order in the above terms and the landlord must be served with this order in accordance with the Act. 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: February 23, 2023

Residential Tenancy Branch