



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenant (hereinafter, the “Tenant”) filed an Application for Dispute Resolution (the “Application”) on May 19, 2022 seeking compensation in line with the Landlord’s notice to end tenancy. Additionally, the Tenant seeks reimbursement of the Application filing fee.

I conducted the hearing with the Tenant and the Landlords (hereinafter, the “Landlord”) on February 2, 2023 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”).

In the conference call hearing I explained the process and provided each party the opportunity to ask questions on the procedure. Both parties had the opportunity to present submissions and respond to the other’s evidence and testimony.

Preliminary Matter – the parties’ service of documents

The Tenant set out that they provided the initial Notice of Dispute Resolution Proceeding to the Landlord via registered mail on June 7, 2022, the day after they received this document from the Residential Tenancy Branch. The Landlord confirmed they received this on June 10, 2022.

The Tenant sent more evidence on November 17, 2022 to the Landlord which the Landlord also confirmed as delivered and received.

In January, the Tenant provided more evidence in this matter. They stated in the hearing that they did not provide this to the Tenant, only the Residential Tenancy Branch. Given the delay, and non-disclosure to the Landlord, and with attention to Rule

3.14 of the *Residential Tenancy Branch Rules of Procedure*, I omit this evidence from consideration. The Tenant did not serve it to the Landlord, and it was not provided to the Residential Tenancy Branch “not less than 14 days before the hearing.”

In the hearing, the Landlord described sending their prepared evidence to the Tenant via registered mail, on “January 15 or January 16.” The Tenant added that the Landlord sent the item on January 16. The Tenant maintained that a consideration of any timeline for the respondent’s material must add five days for deemed service provisions via registered mail.

I find the Landlord provided their material to the Tenant with ample time, and within the timeline set out in Rule 3.15: not less than seven days before the hearing. This was January 16 on which the Tenant provided their material to the Residential Tenancy Branch, and at the latest by January 21 to the Tenant. January 21 is 12 days before the February 2, 2023 hearing date. I give the Landlord’s evidence full consideration in my decision herein.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for compensation pursuant to s. 51 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement. This shows the tenancy for the basement suite rental unit starting on September 12, 2019 on a month-to-month basis. The Tenant paid \$2,000 per month. Initially there were two tenants in this agreement; however, the other tenant moved out in November 2019, leaving this Tenant as the sole occupant at the rental unit.

The Landlord moved in upstairs in September 2019. They undertook renovations to that upstairs suite in the rental unit property starting on October 1, 2019. The Tenant stated that these renovations were without permits and proved to be disruptive with

noise and other interruptions. In the hearing, the Tenant kept re-stating their complaints about these upstairs renovations.

The Landlord started the end-of-tenancy process with the Tenant via the Two Month Notice to End Tenancy for Landlord's Use of the Property (the "Two-Month Notice"), served on January 29, 2020. This set the move-out end-of-tenancy date on March 31, 2020.

The Tenant challenged this Two-Month Notice in a formal dispute resolution process. On the record is the Arbitrator's decision recording the settlement agreement between the two parties, along with an order of possession to the Landlord, guaranteeing their possession of the rental unit on May 31, 2020.

The Tenant and the Landlord in this hearing both agreed that the Tenant moved out from the rental unit on May 31, 2020.

The Tenant presented that they contacted to the local municipality about renovation permits for the Landlord's upstairs work. This was after they moved out from the rental unit. They submitted this was a "renoviction" that ruined their quiet enjoyment within their own rental unit. They submitted that there were a number of people in the garage, and had prepared evidence of people entering and leaving that garage space. They stated that maybe the Landlord's mother had moved in originally; however, people parked their cars around the rental unit in the evening, and then left the following morning. The Tenant stated that they took videos of these interactions and visitors in October 2020 and again in January 2021.

The Landlord presented that, after the Tenant moved out on May 31, 2020, their mother moved into the rental unit in July. The month of June 2020 was the time that they prepared and renovated the rental unit for their mother's occupancy of that rental unit. This was carpeting refreshed, as well as a repainting of the rental unit. Previously, the rental unit had been subject to an ant infestation, and was "definitely pretty old". The Landlord provided the exact move-in date for their mother as July 2, 2020. This was "4.5 months after she originally planned to."

In their written account that forms part of the record, the Landlord provided that they did not make final arrangements for their mother's move in until the Tenant had finally moved out and they were sure of that. This was because the Tenant did not move after the arrangement to vacate was originally set at March 31, 2020 – this required

temporary storage of their mother's furniture. This furniture was moved into the newly-refreshed rental unit on June 28, 2020.

On July 18, 2020 the sewer backed up because of an overgrown tree that was "constricting [the] external pipes", flooding the rental unit. From this date through to November 30, 2020 the rental unit was uninhabitable because of the restoration work involved after the flood. The Landlord's mother could no longer live in the basement during this time, moving back to their earlier out-of-province home with the Landlord's grandmother. The Landlord provided images of the flooded basement in their evidence for this hearing and a video of the flooded rental unit.

Additionally, the Landlord had a witness attend the hearing. This was a contractor who worked with the Landlord on the post-flood restoration in the rental unit. This contractor described the necessary work, caused by roots outside the rental unit, causing brown water, meaning that the residents of the rental unit had to leave for the completion of work. In their words, there was "no way someone could live there."

After the restoration of the rental unit was complete, the Landlord's mother decided to stay in their previous out-of-province home. This was due to the Landlord's own financial situation, as well as public health measures in place at that time. They noted their mother's eventual move into the rental unit was initially delayed by 4.5 months, and this made for a lot of moving within a relatively short timeframe. The Landlord eventually re-rented the rental unit space to new tenants on January 2, 2021, as shown in the new tenants' tenancy agreement in their evidence. In the hearing, the Landlord stated they waited to rent out to new tenants, aware of the six-month time period in which they could not rent to new tenants.

The Tenant presented that people were inside the rental unit, occupying it in some capacity, in November 2020. They submitted that people were living in the rental unit in October 2020. As proof of this, they presented photos of numerous people in the rental property garage. The Tenant also presented they had a video of people walking around in the kitchen space; however, the Landlord stated they did not see this video in the Tenant's evidence disclosed to them.

Analysis

Under s. 49(3) of the *Act* a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

A tenant's compensation in special circumstances is governed by section 51 which provides:

- (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
 - (a) 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
 - (b) 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.
- (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, or
 - (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.

In order to make a finding of fact, and thereby determine an entitlement of compensation, I shall determine whether or not the Landlord took steps to accomplish the stated purpose for ending the tenancy. If the steps taken are not established in the evidence, I shall then determine whether extenuating circumstances prevented this. In each consideration, the burden of proof is on the Landlord to establish facts on a balance of probabilities.

First, I find as fact that the Landlord took steps to accomplish the stated purpose for ending the tenancy within a reasonable period after May 31, 2020. This was by the time their mother moved into the rental unit on July 2, 2020, after a period of cosmetic renovations inside the rental unit. The evidence shows the Landlord undertook a certain amount of work within the rental unit to make cosmetic repairs that could not be completed during the tenancy when the Tenant still resided in the rental unit – this was due to the issues raised by the Tenant during the upstairs renovations, and the unsure dates of the Tenant moving out from the rental unit, prompted by that earlier dispute

resolution process that stretched over approximately a two-month timeframe, delaying the end of the Tenant's move out.

I find the evidence, in the form of the Landlord's testimony, shows the Landlord undertook this work very soon after the actual end of tenancy on May 31, 2020. I find this work was in line with their mother's move into the rental unit, which was the reason for the Landlord issuing the Two-Month Notice.

Based on this evidence, I find the Landlord has met the burden to show that they took steps to accomplish the stated purpose for ending the tenancy, which was their parent's move into the rental unit.

I find the evidence shows the Landlord did not use the rental unit for its stated purpose for at least six months' duration. Even though this finding is not necessary after my primary finding above, I wish to add that the Landlord overcame the burden of proof to show that extenuating circumstances beyond their control – the flood in the basement rental unit – prevented the Landlord from using the rental unit for that purpose for the period of six consecutive months after the end of the tenancy on May 31, 2020.

The Landlord offset the burden to show they shall not pay the required amount to the Tenant, and s. 51(2) here does not apply to the situation proven as fact. Laterally, I find the Landlord presented that extenuating circumstances prevented their use of the rental unit, meaning that s. 51(3) applies and they are not obligated to pay the 12-month penalty amount.

The Tenant evidence of myriad sources that was not applicable to the grounds on which they applied for compensation to the Residential Tenancy Branch. The Tenant was taking issue with the renovations in the Landlord's own living area that was not the rental unit in question. The Tenant did not apply for compensation on the interruption to their own quiet enjoyment; however, this appears to be what their presentation of evidence was targeting. To be clear: my focus here was on events that happened *after* the end of this tenancy, as alleged by the Tenant that the Landlord did not use the rental unit for its stated purpose. The Tenant did not present evidence that outweighs that of the Landlord on the point of their Application; therefore, I dismiss the Tenant's Application without leave to reapply. The photos they presented of others' presence at the rental does not definitively prove that the Landlord was either renting to other tenants, or using the rental unit for some other non-tenancy related purpose.

Because the Tenant was not successful in this hearing, they are not entitled to recover the filing fee for their Application.

Conclusion

For the reasons above, I dismiss the Tenant's Application in its entirety and without leave to reapply. Given that the tenancy ended over two years ago, there is no further remedy available to the Tenant, by s. 60 of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 6, 2023

Residential Tenancy Branch