



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      MNETC, FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for \$27,408 representing 12 times the amount of monthly rent, pursuant to sections 51(2) and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenant confirmed, that the landlord served the tenant with his documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) a monetary order of \$27,408; and
- 2) recover the filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant and the prior owner of the rental unit entered into a tenancy agreement starting December 1, 2020. Monthly rent was \$2,284 at the end of the tenancy. On August 28, 2021, the landlord purchased the rental unit from the prior owner. The tenant paid the prior owner a security deposit of \$1,125, which the landlord continues to hold in trust for the tenant.

On January 28, 2022, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use (the "**Notice**"). It specified the reason for ending the tenancy as the rental unit will be occupied by the landlords father or mother. It specified an effective date of April 1, 2022.

The tenant testified that the Notice was not issued in good faith and was served to her due to a dispute regarding an increase of rent or a change in the terms of the tenancy agreement. Despite this, the tenant did not dispute the Notice and vacated the rental unit on February 21, 2022.

The tenant testified that after moving out of the rental unit she kept in contact with her former neighbors who advised her that no one was living in the rental unit, and that it was sitting empty. She submitted a series of photos she took in March and April 2022 from the exterior of the rental unit at various times of the day. No vehicles are seen on in the driveway or parking area in March, and none of the interior or exterior lights appear to be on. In April, a large truck is parked in the driveway and the exterior light is illuminated on more than one occasion. The recycling and garbage bins are stored against the house and move positions between photos. The tenant argued that the landlord attended the rental unit to do yard work periodically which is why the bins moved and the exterior light is on.

She stated that she did not observe vehicles parked on the rental unit with any degree of regularity until December 2022.

The landlord denied issuing the Notice without the requisite good faith required. He testified that his parents were moving to Canada from India and that they needed a place to live. They arrived on March 18, 2022 and the landlord provided a boarding pass confirming this. He testified they started living in the rental unit that same day.

He submitted a customer service agreement from Telus, in his wife's name, showing that home phone service was connected to the rental unit on May 6, 2022. He stated that prior to this, his parents were using their cell phones exclusively.

The landlord testified his parents vacated the rental unit on October 19, 2022 and returned to India. His mother was having medical issues, and preferred to receive treatment in India. He submitted his parent's boarding passes for their return flight to India in support of this as well as a copy of the rental unit's final Telus bill, showing that it was closed as of October 10, 2022.

Additionally, the landlord submitted photographs of his parents and his children playing inside the rental unit and in the back yard. His mother can be seen cleaning in some photographs. His father can be seen mowing the back lawn.

## **Analysis**

Section 51(2) of the Act sets out the basis for the tenant's claim:

### **Tenant's compensation: section 49 notice**

**51(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.

I note that this section does not reference the landlord's motive for issuing the Notice. There is no requirement that a Notice be issued in bad faith in order to engage this penalty and the fact that a Notice was issued in good faith is not a defense against this penalty. Whether a Notice is issued in good faith is relevant to the validity of the Notice, and a landlord's intention when issuing a Notice may be challenged if a tenant wants to have a Notice cancelled and wants to remain in the rental unit. This is not the case here.

This section places the onus on the landlord to prove that the rental unit was used for the stated purpose.

As such, the landlord must prove it is more likely than not that his parents moved into the rental unit within a reasonable period after April 1, 2022 and that it was used for that purpose until October 1, 2022, at the earliest.

Based on the testimony of the landlord, supported by the documentary evidence, I find it is more likely than not that his parents moved into the rental unit when they arrived in Canada in March 2022. The photographs demonstrate they occupied the rental unit and the flight stubs confirm the date of arrival. I accept that they used their cell phones exclusively for the first month and half they resided in the rental unit.

Based on the landlord's testimony, supported by the boarding passes and the final Telus bill, I also conclude that the landlord's parents resided in the rental unit until at least October 1, 2022, and that they departed for India on October 19, 2022.

I am not persuaded that the lack of vehicles in the driveway or visible interior lights at certain times during March and April indicate the rental unit was not used for the stated

purpose, as argued by the tenant. I find the landlord's documentary evidence more persuasive.

As such, I find the rental unit was used for the purpose stated on the Notice by the effective date listed on the Notice and for at least six months thereafter.

The landlord has met the evidentiary burden set out at section 51(2) of the Act. The tenant therefore has no entitlement to an amount equal to 12 times her monthly rent.

### **Conclusion**

I dismiss the tenant's application, in its entirety, without leave to reapply.

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 15, 2023

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Residential Tenancy Branch