



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JAMAN HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant June 05, 2022 (the “Application”). The Tenant applied as follows:

- For compensation because the tenancy ended as a result of a two, four, or 12 Month Notice to End Tenancy, and the Landlord has not complied with the Act or used the rental unit for the stated purpose
- To recover the filing fee

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

The Tenant testified that the hearing package and their evidence were served on the President of the company Landlord in person June 18, 2022. The Tenant had submitted a typed letter confirming service which was signed June 18, 2022, and confirmed the signature is of an agent for the Landlord being the President of the company Landlord.

Based on the undisputed testimony of the Tenant and letter signed by the President of the company Landlord, I find the Landlord was served with the hearing package and

Tenant's evidence in accordance with sections 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the "*Act*") on June 18, 2022. I also find the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation because the tenancy ended as a result of a two, four, or 12 Month Notice to End Tenancy, and the Landlord has not complied with the Act or used the rental unit for the stated purpose?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant seeks \$14,723.00 in compensation pursuant to section 51 of the *Act* based on the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 31, 2021 (the "Notice").

The Tenant submitted a written tenancy agreement between them and a different landlord. The Tenant testified that the landlord named on the tenancy agreement was the prior owner of the rental unit and that the Landlord took possession of the rental unit in January of 2021. The Tenant testified that a new tenancy agreement was not signed between them and the Landlord. The Tenant testified that rent was \$1,226.92 at the end of the tenancy.

The Tenant submitted the Notice. The Notice had an effective date of December 31, 2021. The grounds for the Notice were:

The rental unit will be occupied by the Landlord or the Landlord's close family member being the child of the Landlord or Landlord's spouse.

The Landlord 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.

The Tenant confirmed receipt of the Notice August 31, 2021.

The Tenant testified that they provided the Landlord 10 days notice ending the tenancy early and moved out of the rental unit October 31, 2021.

The Tenant testified that they were told the Property Manager's brother was going to move into the rental unit and this was the reason for the Notice.

The Tenant testified that nobody moved into the rental unit after they moved out. The Tenant testified that they have observed the rental unit since and it has sat empty with nothing and nobody there. The Tenant had submitted numerous video clips driving by and showing the rental unit to support their position that nobody moved into the rental unit. The Tenant testified that the video clips were taken on different days and at different times of the day, some being around 7:00 a.m. and some past 12:00. The Tenant testified that the first video taken was on January 01, 2022, and the last was on May 15, 2022. The Tenant testified that they called Fortis which confirmed the gas usage at the rental unit has been much lower since the Tenant moved out and that the gas bills are only for the base amount.

Analysis

It is clear the Landlord is not an individual and is a company and therefore I find the Notice was issued pursuant to section 49(4) of the *Act* which states:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

Section 51 of the *Act* states:

(2) Subject to subsection (3), the landlord...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...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 or the purchaser, as applicable, 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.

The Landlord has the onus to prove they followed through with the stated purpose of the Notice within a reasonable period after the effective date of the Notice and for at least six months. The Landlord also has the onus to prove extenuating circumstances.

I accept the undisputed testimony of the Tenant that nobody moved into the rental unit after they moved out and I find the video clips support this. I accept the Tenant's testimony that the video clips were taken from January to May of 2022.

The effective date of the Notice was December 31, 2021, and therefore the Landlord had to comply with the stated purpose of the Notice within a reasonable period of December 31, 2021, and for at least six months, being until June of 2022. I accept the undisputed position of the Tenant that the rental unit remained empty from January to at least May of 2022, and find the Landlord failed to follow through with the stated purpose of the Notice within a reasonable period after December 31, 2021. I find section 51(2) of the *Act* applies and the Landlord must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I find extenuating circumstances do not apply because nobody appeared at the hearing for the Landlord to argue or prove extenuating circumstances.

Given the Tenant has been successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$14,823.04 and is issued a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenant is entitled to \$14,823.04 and is issued a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 14, 2023

Residential Tenancy Branch