



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

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

DECISION

Dispute Codes MNETC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on February 28, 2023. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

The Tenant attended the hearing and provided affirmed testimony. The Landlord did not attend the hearing. The Tenant testified that he sent the Notice of Dispute Resolution Proceeding and evidence package to the Landlord (purchaser of the rental unit) by registered mail on June 28, 2022. The Tenants provided registered mail tracking information in the hearing, and stated they sent the package to the address the Landlord put on the 2 Month Notice to End Tenancy for Landlord's Use (the Notice) under the "purchaser information" section. Pursuant to section 90 of the Act, I find the Landlord is deemed to have received this package 5 days after it was sent by registered mail.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

The Tenant stated that monthly rent was \$2,274.00 per month. The Tenant stated they received the Notice in February 2022, and moved out on or around April 30, 2022. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

At the bottom of this Notice, the Landlord, as named on this application, was listed as the “purchaser”.

The Tenant stated that within a few weeks after he moved out, he saw the unit get reposted for rent at a higher rent. Subsequently, the Tenant filed this application.

The Landlord did not attend the hearing.

Analysis

With respect to the Tenant’s request to obtain 12 months’ worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD’S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- *accomplished 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 (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- *accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlord to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. The Landlord (purchaser of the rental unit) selected the following ground:

- *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

In any event, the Landlord (purchaser) was required to follow through with the grounds behind the Notice (Landlord or close family member move in).

I turn to the following portion of the Act:

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

(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 or, if applicable, the purchaser who asked the landlord to give the notice 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 the case may be, 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 this case, I note the onus is on the Landlord to prove that they accomplished the stated purpose on the Notice, which is that they, or close family members, would be moving into the property, for at least 6 months, beginning within a reasonable period after the effective date of the Notice. The Landlords failed to attend the hearing to discharge the onus placed on them to demonstrate that they followed through with the grounds behind the Notice.

As a result, I find the Tenant is entitled to 12 months' compensation. However, the issue now becomes whether or not the Landlord should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation due to extenuating circumstances.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be

unreasonable and unjust for a landlord to pay compensation. Some examples are:

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- *A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- *A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

The Landlord was not present to speak to any extenuating circumstances. I am not satisfied that there were any “extenuating circumstances”, such that it would be unreasonable or unjust for the Landlord to pay the compensation.

I award the Tenant \$27,288.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$2,274.00. I also award the \$100.00 filing fee, pursuant to section 72 of the Act.

Conclusion

I grant the Tenant a monetary order in the amount of \$27,388.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: March 1, 2023

Residential Tenancy Branch