



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code MNETC

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).

Tenant RS (the tenant) and landlord AP (the landlord) attended the hearing. Witness for the landlord LP also attended. 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 tenant's evidence (the materials) and that he had enough time to review them.

The landlord served the response evidence via registered mail to the tenant's forwarding address on February 23, 2023. The tracking number is recorded on the cover page of this decision.

The tenant did not receive the landlord's response evidence. The tenant stated it is not fair that the landlord served the response evidence less than one month before the hearing.

I verified the tracking number provided by the landlord during the hearing on Canada Post's website. It indicates the package mailed on February 23, 2023 was not delivered because the tenant did not pick it up.

Section 89(1) of the Act states:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations.

Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Based on the landlord's testimony, I find the tenant served the materials in accordance with section 89(1) of the Act.

Based on the landlord's convincing testimony and the tracking number, I find the landlord mailed the response evidence on February 23, 2023. Per section 90 (a) of the Act, the tenant is deemed to have received the response evidence on February 28, 2023. As explained in Policy Guideline 12, when a package mailed by registered mail is not picked up, receipt continues to be deemed to have occurred on the fifth calendar day after mailing.

In accordance with Rule of Procedure 3.15, the landlord, respondent in this application, must serve the response evidence seven calendar days before the hearing. I accepted the landlord's response evidence.

Issue to be Decided

Is the tenant entitled to a monetary order for an amount equivalent to twelve times the monthly rent?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties and witnesses, not all details of the submissions and arguments presented during the 55-minute hearing are reproduced here. The relevant and important aspects of the tenant's claim 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 15, 2016 and ended in July 2023. Monthly rent when the tenancy ended was \$1,450.00, due on the first day of the month. The landlord collected a security deposit and the tenant authorized the landlord to apply it in full for rental arrears during the tenancy. The tenancy agreement was submitted into evidence.

The tenant testified that he returned the rental unit's key to the landlord on Saturday, July 02, 2022. The landlord believes he received the rental unit's key on July 04 or 05, 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).

The tenant submitted a copy of the April 30, 2022 Notice into evidence. It states the landlord's child will occupy the rental unit. The effective date was July 01, 2022. The landlord said he served the Notice for his daughter LP (the daughter), to move to the rental unit.

Both parties agreed they signed a mutual agreement to end tenancy on May 01, 2022, effective on June 30, 2022.

Both parties also agreed they did not cancel the Notice. The tenant did not pay rent due on June 01, 2022, per section 51(1) of the Act.

The landlord affirmed the tenant left the rental unit in poor condition, as there was a large amount of garbage, abandoned furniture, dirty walls and the doors were damaged. The tenant stated the rental unit was not clean when he moved out because he had health issues.

The landlord testified that he cleaned the house and painted it in July 2022 and the daughter and the daughter's mother moved to the rental unit on August 01, 2022. The daughter continues to occupy the rental unit.

The tenant said a neighbour informed him in mid-June 2022 that the landlord tried to re-rent the unit. The advertisement printed on June 24, 2022 states: "Hello friend. I have a 3 bedroom, 2 bathroom, 2 car garage, top floor half duplex available for rent July 15-August 1. \$2,650.00 + utilities. Small pet negotiable."

The landlord affirmed that his daughter's mother made an offer to purchase a house in June 2022. Considering that the parties signed a mutual agreement to end the tenancy, the landlord imagined that he could re-rent the rental unit and advertised it. On June 25, 2022 the daughter's mother's offer was rejected and the daughter decided to move to the rental unit with her mother.

The tenant stated he does not believe the daughter moved in. The tenant submitted a text message from the landlord received on July 02, 2022 (the text message):

Deleting what messages? This conversation is fully documented. Situation with my daughter changed 2 weeks ago as her mom bought a place. At that point you have already signed mutual agreement to move out. You kept on moving people out and breaking our agreement. Blame yourself for this. You had a month of free rent instead of being evicted.

The tenant testified that the landlord's testimony is not consistent, as the text message indicates that on July 02, 2022 the landlord still planned to re-rent the rental unit.

The tenant said that he does not know if the daughter moved in, as he did not visit the rental unit and did not contact his former neighbours.

Upon my request, the landlord called his daughter and asked her to attend the hearing. The daughter joined the hearing in the last ten minutes.

The daughter affirmed that she moved to the rental unit in June or July 2022 and that she continues to live in the rental unit. The daughter stated that she helped the landlord to clean and paint the rental unit in July 2022, as the unit was very dirty when the tenant moved out.

The landlord testified that the daughter started moving her belongings and occupying the rental unit in mid-July 2022.

Analysis

Section 49(3) of the Act states: "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."

Section 49(1) of the Act, the landlord's daughter is a close family member:

"close family member" means, in relation to an individual,
(a) the individual's parent, spouse or child, or
(b) the parent or child of that individual's spouse;

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 Notice was served to allow the landlord's daughter to occupy the rental unit.

The landlord's testimony about the end of the tenancy was vague, as the landlord said the tenancy ended on July 04 or 05, 2022. Based on the tenant's convincing testimony, I find the tenancy ended on July 02, 2022.

I find the daughter must have occupied the rental unit from July 03, 2022 to January 02, 2023, as the Notice's effective date was July 01 and the tenancy ended on July 02, 2023.

I note that when the parties sign a mutual agreement to end the tenancy this agreement only cancels a notice to end tenancy if the parties agree to cancel the notice to end tenancy. I accept the uncontested testimony the parties did not cancel the Notice.

RTB 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.

The parties offered conflicting testimony regarding the occupancy of the rental unit after the tenancy ended.

I find the landlord's testimony explaining why he advertised the rental unit in late June 2022 is convincing, as the landlord explained that the daughter's mother made an offer to purchase a house and the offer was rejected on June 25, 2022.

The text message does not contain information about the daughter not moving to the rental unit after July 02, 2022.

I find the landlord's testimony about the date that his daughter moved to the rental unit had a minor contradiction, as the landlord affirmed his daughter moved to the rental unit on August 01, 2022 and later stated that the daughter started moving to the rental unit in mid-July 2022.

I find the tenant's testimony had a contradiction, as the tenant testified that he does not believe the daughter moved in and later said that he does not know if the daughter moved in or not, as he did not visit the rental unit and did not contact his former neighbours.

I find the daughter's testimony also had a minor contraction, as the daughter affirmed that she moved in June or July 2022 and the landlord initially stated that his daughter moved in on August 01, 2022 and then testified that the daughter started moving in mid-July 2022. I note the daughter was not expecting to attend the hearing and called in the last ten minutes after my request for her to attend the hearing.

I find the tenant's contradiction outweighs the contradictions in the testimony offered by the landlord and his daughter, as the tenant explained why he does not know if the daughter moved to the rental unit. Furthermore, the contractions in the testimony offered by the landlord and his daughter are minor and only about the date that the daughter moved in.

Considering the above, I find the landlord proved, on a balance of probabilities, that his daughter has been occupying the rental unit at the latest since August 01, 2022, 28 days after the tenant moved out.

Based on the advertisement, I find the rental unit is a 3 bedroom unit.

I accept the uncontested testimony that the rental unit was in poor condition when the tenancy ended and that the landlord and his daughter cleaned and painted it between July 03 and 31, 2022. I find that the daughter moved in within a reasonable amount of time after the tenant moved out, as the landlord and the daughter cleaned and painted the 3 bedroom rental unit for 27 days.

Thus, the tenant is not entitled to a monetary order under section 51(2) of the Act.

Conclusion

I dismiss the tenant's application 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: March 28, 2023

Residential Tenancy Branch