



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

On July 6, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 51 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with J.K. attending as a notetaker for the Tenant. The Landlord attended the hearing as well, and he confirmed his full, legal name. As such, the Style of Cause on the first page of this Decision has been amended to reflect this change. In addition, he did not oppose having J.K. attend the hearing as a notetaker for the Tenant.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of J.K., provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package was served to the Landlord by email on July 20, 2022, and the Landlord confirmed that he received this package. As such, I am satisfied that the Landlord has been duly served this package.

The Tenant then advised that she emailed her evidence to the Landlord on different dates; however, she was not entirely sure when this was done. The Landlord acknowledged likely receiving the Tenant's emails, but he was not entirely sure either. He confirmed that he received the Tenant's evidence on March 20, 2023, and he stated that he was prepared to respond to it, despite it being served late. Based on this testimony, I am satisfied that the Landlord likely received the entirety of the Tenant's evidence. As such, I have accepted the Tenant's documentary evidence and will consider it when rendering this Decision.

The Landlord advised that he served his evidence to the Tenant by email, but he was uncertain when he did this. The Tenant confirmed that she received this evidence. As such, I have accepted the Landlord's documentary evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation in the amount of
- twelve months' rent?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2020, and that the tenancy ended on March 1, 2022, when the Tenant gave up vacant possession of the rental unit based on the Notice. Rent was established at an amount of \$1,200.00 per month and was due on the first day of each month. A security deposit of \$600.00 was also paid;

however, the Tenant claimed that she also paid a \$200.00 pet damage deposit. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord testified that the Notice was served to the Tenant by email on December 21, 2021. The reason the Landlord served the Notice is because “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.” The effective end date of the tenancy was noted as March 1, 2022, on the Notice.

He referred to the Tenant Occupied Property – Buyers [sic] Notice to Seller for Vacant Possession form that was submitted as documentary evidence to support his position that all of the conditions for the sale of the rental unit had been satisfied, and that the purchaser asked him, in writing, to serve the Notice because the purchaser or a close family member intended in good faith to occupy the rental unit. Based on this form, he served the Notice accordingly.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Regarding the Tenant's claim for 12 months' rent, Section 51 of the *Act* below outlines compensation requirements if the Landlord did not use the property for the stated purpose:

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.

Given that the consistent and undisputed evidence is that all of the conditions for the sale of the rental unit had been satisfied, and that the purchaser asked the Landlord, in writing, to serve the Notice because the purchaser, or a close family member, intended in good faith to occupy the rental unit, it is clear in this instance that the purchaser would be the party responsible for using the property for the stated purpose after the effective date of the Notice, not the Landlord. As such, I am satisfied that the Tenant should have made the Application against the purchaser for this claim. Consequently, I dismiss this claim against the Landlord in its entirety. The Tenant is at liberty to make a new Application against the purchaser for the appropriate remedy.

As the Tenant was not successful in this claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, the Tenant's Application against the Landlord is dismissed 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 27, 2023

Residential Tenancy Branch