Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding Realty Executives Eco-World and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the former Tenant on November 7, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- 12 times their monthly rent pursuant to section 51(2) of the Act.

The hearing was convened by telephone conference call at 9:30 am on April 6, 2023, and was attended by the former Tenant (Tenant), their spouse KH, and two agents for the Landlord, JG and BD(Agents). All testimony provided was affirmed. As the Agents acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) and raised no concerns with regards to service date or method, the hearing proceeded as scheduled. The participants were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The participants were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that personal recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Residential Tenancy Branch Rules of Procedure (Rules of Procedure), I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

The Agents stated that the respondent XW is the property owner, and that the corporation named as the landlord in the tenancy agreement and the Application is a property management company acting as an agent on the owner's behalf. As a result, it was their position that the property management company should not have been named as a respondent/landlord. However, I note that the corporation is named as the landlord in the tenancy agreement and Two Month Notice. I also note that the agents for the corporation have been exercising duties under the Act and the tenancy agreement. As a result, I find that the corporation meets the definition of a landlord under section 1 of the Act.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (Branch) under section 9.1(1) of the Act.

Issue(s) to be Decided

Is the Tenant entitled to 12 times their monthly rent pursuant to section 51(2) of the Act?

Background and Evidence

The parties agreed that a tenancy to which the Act applies existed between the parties which ended sometime between July 1, 2022, and July 3, 2022, because of a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice). The Two Month Notice before me is on the Residential Tenancy Branch (Branch) form, is signed and dated May 17, 2022, has an effective date of July 31, 2022, and states that the reason the Two Month Notice was served is because the rental unit will be occupied by the Landlord or the Landlord's spouse.

The Agent argued that the Tenant should not be entitled to compensation under section 51(2) of the Act as the owner XW moved into the rental unit within a reasonable period after the effective date of the Two Month Notice, and resided there for a duration of not less than six months. The Agent stated that XW moved into the basement on approximately July 10, 2022, opened utility accounts in their name at that address, changed the locks, and hired a handy man to complete some repairs around the property. The Agent and XW submitted photographs of the property before and after the repairs, copies of utility bills, a cleaning invoice, a locksmith invoice, and a letter from the municipality regarding bylaw infractions, in support of their testimony that XW occupied the rental unit both within a reasonable period after the effective date of the Two Month Notice, and for at least six months duration thereafter. The Agent stated that the Landlord moved out of the rental unit in mid-January of 2023, as their other residence failed to sell, and re-rented the rental unit to new tenants.

The Tenant and their spouse denied that XW ever occupied the property, stating that they regularly attended the rental unit for some time after the end of their tenancy to collect their mail, and pass the rental unit daily, and it was not being occupied until the end of December 2022, or the beginning of January 2023, when new tenants moved in. The Tenant and their spouse stated that their former neighbours also advised them that the rental unit remained vacant after they moved out. The Tenants pointed to the electricity bills submitted by the Agents, alleging that they show the account was closed on December 28, 2022, and transferred to the new tenants, which is contradictory to the Agents' testimony where they said XW moved out mid January of 2023. The Tenants stated that they also spoke with the new tenants of the property, who confirmed that they moved in on January 1, 2023.

The Tenants pointed to the utility bills submitted by the Agents stating that they show a different mailing address for XW than the rental unit address, which makes no sense if XW was occupying the rental unit. The Tenants also stated that the electricity bills submitted by the Agents show no electricity use until the end of October 2022, which makes no sense if XW began living there on July 10, 2022, and that thereafter there is very minimal electricity usage until January of 2023, suggesting that the rental unit was not occupied until that time.

The Agents denied that the electricity account was closed December 28, 2022, and stated that the electricity bills continued to be mailed to XW's previous address, as they have difficulty with English and therefore their friend and realtor was collecting and

delivering them to XW. When I asked why mail relating to the rental unit, where XW was allegedly residing full-time, was being delivered to another address, picked-up by a third party, and then delivered by that third party to XW at the rental unit address, when it could simply have been mailed directly to the rental unit, the Agents changed their testimony, stating that the mailing address was not changed for the electricity bill as the bills were received via email. Although the Agents acknowledged that the electricity usage was low, they denied the Tenants' allegations that there was no usage until the end of October 2022, and explained the low usage as being a result of the Landlord's occupancy of only the basement and the use of gas heating.

The Tenants argued that the utility usage is so low that one cannot reasonably conclude that any portion of the home was being occupied, and stated that the furnace heats the entire home, not just the basement, and is electric, which means it would have increased the electricity bills if XW had been occupying the home for any portion of the winter. The Tenants submitted the Two Month Notice, copies of text messages, utility bills, the tenancy agreement, and a Notice of Rent Increase (NORI), among other things, for my consideration.

The parties also disputed whether rent was $3,000.00 or $3,045.00 at the time the tenancy ended.

Analysis

I am satisfied that a tenancy to which the Act applies existed between the parties, and that the tenancy ended because of the Two Month Notice at the beginning of July 2022. Although the Agents argued that rent was $3,000.00 at the time the tenancy ended, the Tenants submitted a NORI stating that as of June 1, 2022, rent was increased from $3,000.00 to $3,045.00. As a result, I find that rent was $3,045.00 at the time the tenancy ended, even though the Tenants withheld June of 2022 rent pursuant to sections 51(1) and 51(1.1) of the Act.

Is the Tenant entitled to 12 times their monthly rent pursuant to section 51(2) of the Act?

Although the Agents provided proof that utility accounts were opened in XW's name at the rental unit address, that the locks were changed, and that repairs were done to the property, I do not find that opening a utility account, changing locks, or completing repairs to the property establishes that the property was occupied for residential purposes as required. As a result, I find that the Landlord has failed to satisfy me that the rental unit was occupied for residential purposes by the Landlord within a reasonable period after the affective date of the Two Month Notice, and for at least six months duration thereafter. I also have serious cause for concern that the property was in fact not occupied for residential purposes by the Landlord, based on the testimony of the Tenant and their spouse at the hearing.

Finally, I find that even if I were satisfied that XW occupied the property for residential purposes, which I explicitly have not found, XW's occupancy would not be considered compliance with the Two Month Notice for the purpose of section 51(2) of the Act, as the Landlord named in the tenancy agreement and the Two Month Notice is a corporation, the agents acknowledged at the hearing that it is not a family corporation, and the Agents stated that XW is not an owner of that corporation. Although the owner of a property *may* meet the definition of a landlord under the Act, I find that to do so they must permit occupation of the rental unit under a tenancy agreement or exercise powers and perform duties under the Act, the tenancy agreement, or a service agreement, which I am not satisfied that they did, as the property management company is named as the landlord in the tenancy agreement and the Two Month Notice, and it is the property management company's agents, not the owner, who have been exercising duties under the Act and the tenancy agreement. As a result, I find that XW is not a landlord under the Act, and I remove them as a named respondent. This does not, however, necessarily absolve XW from any financial responsibilities they have to the Landlord in relation to this matter. They parties may wish to seek independent legal advice in relation to that matter.

Based on the above, I therefore grant the Tenant's Application seeking 12 times the amount of rent payable under the tenancy agreement, pursuant to section 51(2) of the Act. As a result, I therefore grant the Tenant a monetary order in the amount of $36,540.00, pursuant to section 67 of the Act.

Conclusion

I grant the Tenant's Application seeking compensation under section 51(2) of the Act.

Pursuant to section 67 of the Act, I therefore grant the Tenant a monetary order in the amount of **$36,540.00**. The Tenant is provided with this order in the above terms and the Landlord must be served with this order as soon as possible. Should the Landlord fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: April 24, 2023

Residential Tenancy Branch