



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

On July 14, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, and J.D. attended the hearing as an agent for the Landlord. 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, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord on July 29, 2022, and J.D. confirmed that the Landlord received this package. However, she stated that there were no screenshots of text messages included in the package as documentary evidence. The Tenant testified that he “might have a photo” of this evidence being included in the package, but he was “not sure”.

As the burden would be on the Tenant to corroborate service, without proof that this documentary evidence was included with the Notice of Hearing package, I am not satisfied that it was served accordingly. While I am satisfied that the Landlord was duly served the Notice of Hearing package in accordance with Sections 89 and 90 of the *Act*,

I am not satisfied that the Tenant's evidence was served. As such, the Tenant's evidence will be excluded and not considered when rendering this Decision.

J.D. advised that the Landlord's evidence was served to the Tenant by registered mail on October 25, 2022, and it was sent to the Tenant's address on the Notice of Hearing package (the registered mail tracking number is noted on the first page of this Decision). She referenced a tracking history that was submitted as proof of service to indicate that this package was delivered and signed for on October 26, 2022. As well, she stated that she submitted this evidence to the Residential Tenancy Branch on October 25, 2022, directly at the office, although there is no record of this having been done. The Tenant confirmed that that was his address; however, he advised that he never received this package. Based on the evidence before me, I am satisfied that this evidence, more likely than not, was served in accordance with Section 88 of the *Act*. As such, I have accepted this 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 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- 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.

There was no written tenancy agreement created by the Landlord, and this is contrary to the *Act*. As a result, neither party knew when the tenancy started, although it could possibly have been on or around June 2017. As well, the parties were unsure of when

exactly the tenancy ended, and it could have been on or around early April 2022 when the Tenant gave up vacant possession of the rental unit. The parties did agree that rent was established at an amount of \$1,650.00 per month and was due on the first day of each month. As well, a security deposit of \$825.00 was also paid.

All parties also agreed that the Notice was served to the Tenant by hand on February 16, 2022. The reason the Landlord checked off on the Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The effective end date of the tenancy was noted as May 31, 2022, on the Notice.

J.D. advised that the Landlord's wife was responsible for managing the tenancy, and due to some marital difficulties, the intention was for the Landlord to reside in the rental unit. She testified that the Landlord did move into the rental unit when he received the keys back sometime in April 2022, and his father helped him move; however, there was no documentary evidence submitted to corroborate the date of this move. She stated that the Landlord was involved in a car accident on June 20, 2022, and he moved back in with his wife because he needed care due to being unable to walk. She referenced the chiropractor statement submitted as documentary evidence to support the submission of a car accident. She then stated that once he recovered, he moved back into the rental unit on July 26, 2022, and has lived there since. She referenced pictures submitted as documentary evidence to demonstrate that he has been occupying the rental unit. She stated that these pictures were taken at the end of August or September 2022.

The Tenant advised that he drove by the rental unit many times, and there was no activity. Moreover, he testified that he spoke with neighbours, who also confirmed that there was no activity in the rental unit. However, he did not submit any documentary evidence to support these submissions. He then referred to some confusing text messages he received from the Landlord about wanting to demolish the rental unit, or his own residence. He did not make any submissions to refute any of J.D.'s testimony.

J.D. advised that while she did not know what texts the Tenant was referring to, she stated that the Landlord owned another property that was demolished.

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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52, and I find that it is a valid Notice.

With respect to the Tenant's claim for twelve-months' compensation owed to him as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on February 16, 2022, and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

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.

I also note that the good faith requirement ended once the Notice was accepted, and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective end date of the Notice.

Regarding this situation, I find it important to emphasize that Section 51(2)(a) states that the 12 months' compensation is awarded if "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." As well, the effective date of the Notice was May 31, 2022.

In addition, I also note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the burden of proof in this type of Application reverts to the Landlord to provide sufficient evidence, over and above their testimony, to establish that they used the property for the stated purpose for at least six months after the effective date of the Notice. Furthermore, the burden for proving this was established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence, I have before me J.D.'s solemnly affirmed testimony that the Landlord moved into the rental unit immediately after receiving the keys back, that he has lived there since that time, with the exception of a month where he was incapacitated, and documentary evidence corroborating his occupation of the rental unit. While there could have been more evidence to support this, the only evidence to refute this is the Tenant's solemnly affirmed testimony that neither he, nor the neighbours, saw any activity in the rental unit. Given that the Tenant had a significant amount of time to submit any persuasive, documentary evidence corroborating his claims and rebutting the Landlord's evidence that he occupied the rental unit, none of this was submitted.

In weighing the evidence of the parties before me in its totality, I find J.D. to be a more credible witness than the Tenant. She provided consistent testimony which was supported with some documentary evidence where available. Other than suggestions, the Tenant provided little compelling or reliable testimony, or supporting documentary evidence, that would outweigh J.D.'s testimony, and supporting documentary evidence, to shift the balance of probabilities in his favour. Based on the foregoing, where the evidence of the parties clashed, I found J.D.'s version to be more credible.

As such, I am satisfied, on a balance of probabilities, that the Landlord moved into the rental within a reasonable period of time after the effective date of the Notice, and occupied it for a period of at least six months after this date. Consequently, I am satisfied that the Landlord has complied with the *Act*.

Ultimately, I find that the Tenant is not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*. Moreover, as the Tenant was not successful in his claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution 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: April 6, 2023

Residential Tenancy Branch