



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated April 28, 2022 ("Two Month Notice"); and to recover her \$100.00 Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about it. During the hearing, the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The testified that she served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on August 18, 2022. The Tenant provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and she confirmed these in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised her that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of her \$100.00 Application filing fee?

Background and Evidence

The Tenant confirmed that the fixed term tenancy began on December 1, 2019, and ran to December 31, 2020, and then operated on a month-to-month basis. The Tenant said she was required to pay the Landlord a monthly rent of \$1,750.00, due on the first day of each month. The Tenant said she had paid the Landlord a security deposit of \$850.00, and a \$500.00 pet damage deposit. She confirmed that the Landlord returned these deposits to her at the end of the tenancy. The Tenant said she vacated the rental unit on June 30, 2022.

The Tenant said that the tenancy ended, because the Landlord served her with the Two Month Notice. She confirmed that the Two Month Notice was signed and dated April 28, 2022, and it had the rental unit address on it. The Two Month Notice was served via email on April 30, 2022, with an effective vacancy date of June 30, 2022. The Two Month Notice was served on the grounds that the rental unit would be occupied by the Landlord or the Landlord's close family member (Landlord and her spouse were specified in this case).

The Tenant said that the Landlord did not move in, but rather, she sold the residential property shortly after the tenancy ended. The Tenant provided evidence of the sales listings advertised by the Landlord for the residential property that was listed prior to July 23, 2022. The Tenant provided a video of her visit to the residential property during an open house for its sale. The Tenant said this video was made on July 23, 2022.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51 (2) of the Act states that a landlord must pay the tenant an amount that is equivalent to 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.

In the Two Month Notice dated April 28, 2022, the Landlord indicated that the Landlord or a close family member, intended to occupy the rental unit. There is no evidence before me that the Landlord ever lived in the residential property after the tenancy ended.

The Tenant gave evidence that instead of being occupied by the Landlord or a family member that the rental unit was placed on the market for sale. The Tenant provided documentary evidence by way of the online listings showing the residential property as available for sale. The Tenant also provided evidence that the Landlord had an open house for the sale of the residential property within a month of the end of the tenancy.

I accept the evidence that the Landlord did not use the rental unit for the purposes stated on the Two Month Notice. Consequently, I find that the Tenant is entitled to a monetary award of **\$21,000.00**, the equivalent of 12 times the monthly rent of **\$1,750.00** payable under the tenancy agreement. Pursuant to sections 51 (2) and 67 of the Act, I award the Tenant with **\$21,000.00** from the Landlord.

As the Tenant was successful in her Application, I also award her with recovery her **\$100.00** filing fee, pursuant to section 72 of the Act. I, therefore, grant the Tenant a **Monetary Order** from the Landlord of **\$21,100.00** pursuant to section 67 of the Act.

Conclusion

The Tenant is successful in her Application, as she provided sufficient evidence to meet her burden of proof on a balance of probabilities. The Tenant is awarded \$21,000.00 from the Landlord, in addition to recovery of her \$100.00 Application filing fee.

Pursuant to sections 51 and 67, I grant the Tenant a **Monetary Order** from the Landlord of **\$21,100.00**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 24, 2023

Residential Tenancy Branch