



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

On September 9, 2022, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant were present at the hearing. The Landlord was assisted by his son and by legal counsel. At the start of the hearing, I introduced myself and the participants.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Counsel for the Landlord stated that the Mr. J.P. did not sign the tenancy agreement and is not a Tenant and should be removed from the Tenant’s application.

The Tenant was in agreement to remove Mr. J.P. and the application is accordingly amended.

Issue to be Decided.

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The Tenant and Landlord testified that the tenancy began on June 1, 2013, on a month-to-month basis. Rent in the amount of \$900.00 was due to be paid to the Landlord by the first day of each month.

The Landlord decided to let his daughter live in the rental unit and issued the Tenant a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 22, 2022 ("the Two Month Notice"). The effective date of the Two Month Notice was April 30, 2022.

The reason cited for ending the tenancy within the Two Month Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member. Child of Landlord or Landlord's spouse.

The Tenant accepted the Two Month Notice and moved out of the rental unit on April 1, 2022. The Tenants provided a copy of the Two Month Notice.

The Tenants testified the Landlord did not accomplish the purpose of the Two Month notice because the Landlord's daughter did not occupy the rental unit.

The Tenant testified that when she moved into the unit there were many people living in the Landlords home and there were also other rental units in located within the home described as unit #1, #2, and #3. The Tenant testified that at one point she moved from unit #2 to unit #3 due to a fire.

The Tenant stated that three months after she had a baby, the Landlord Mr. D.S. came to the door and said that his mom and sister wanted more space and were moving into the rental unit. The Landlord served the Tenant with the Two Month Notice. The Tenant accepted the Two Month Notice and moved out of the rental unit on April 1, 2022.

The Tenant stated it was suspicious to her that the Landlord would bring the tenants mail to them rather than the Tenants retrieving their mail directly from the dispute address.

The Tenant stated that she discussed the tenancy and situation with her friend Ms. J.H. who was concerned that the notice was not issued in good faith. Ms. J.H. stopped by the rental unit and knocked on the door to find it was occupied by a new tenant who stated he was not related to the Landlord.

The Tenant had witness J.H. available, who was brought into the hearing and provided affirmed testimony as follows:

- She went to the Tenants old suite and knocked on the door.
- A man answered the door.
- The man stated that his name was Raj and that he lives in the unit with his roommate.
- The man stated that they were both not related to the Landlord.
- The man stated that they are tenants and have lived there since May 2022.
- The man was able to communicate his information clearly with her.

The Landlord's counsel cross examined the witness. He asked the witness when she met with the Tenant and when she went to the rental unit. J.H. replied that she met with the Tenant on May 30, 2022, and she went to the rental unit on July 9, 2022, at 1:24 pm.

The Landlord's counsel asked J.H. why she waited a month to go to the unit, and if she saw another roommate? J.H. replied that she was busy with work and children. She replied that she did not see the other roommate; however, Raj had said he has a male roommate. She replied that she did not get a name for the roommate.

The Landlord's counsel stated that the Landlord complied with section 49(3) of the Act. He submitted that the Landlord's daughter and boyfriend moved into the unit in the first week of May 2022 and lived downstairs until they split up and in January 2023, she moved back upstairs with her family. Counsel stated that the boyfriend was not willing to provide proof he was living there.

The Landlord's counsel stated that his client does not know a person named Raj living there and that it could have been a friend of the daughter's boyfriend. He said it does not seem real. He stated that the Tenant did not provide any copies of advertisements on local websites showing the unit was listed as being for rent.

The Landlord provided a cell phone bill and a bank statement from the Landlord's daughter containing the address of the residential property. The Landlord's daughter was not present to provide direct testimony.

The Landlord's counsel stated that the Landlord re-rented the unit to a new tenant as of February 1, 2023.

The Landlord's counsel stated that there was no issue with the Tenants' baby and that Mr. D.S. delivered the mail to the Tenants because he was being helpful, and it was on his way home. Mr. D.S. was present at the hearing but did not provide direct testimony.

The Tenant responded by pointing out that the Landlord's daughter was living upstairs at the dispute address prior to when the Two Month Notice was issued; therefore, the bank statement and cell bill the Landlord provided showing the dispute address is not reliable evidence that she actually moved into the lower rental unit.

Analysis

The parties are in agreement that the Landlord issued the Tenant a Two Month Notice to End Tenancy for Landlord's Use of Property for the child of the Landlord to occupy the rental unit.

Section 49(3) of the Act permits a landlord to end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member explains the concept of good faith and vacant possession as follows:

"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement..."

Section 51(2) of the Act provides that a landlord must pay the tenant 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:

(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.

Section 51.1(2) of the Act provides that 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.

Compensation for Breach of Section 51

After considering testimony and evidence before me, I make the following findings:

The Landlord bears the burden to prove that they accomplished the purpose of the Notice. I am not persuaded by the Landlord that his daughter occupied the rental unit for at least six months after the Tenant moved out.

I have considered the affirmed testimony of the witness. I find that the witness testimony was detailed as she provided the date and exact time, she attended the unit and that the occupants responded that May 15, 2022, was the date they moved in. She stated that the occupant identified himself as Raj and that he had another male roommate and that they are not related to the Landlord. Overall, I find the testimony of the witness to be credible and internally consistent with her written statement that was provided in the Tenant's evidence.

With regard to the legal counsels statement that the Tenant did not provide rental listings showing the unit was placed for rent, the burden of proof rests with the Landlord not the Tenant.

I find that the Landlord did not submit the better evidence on the matter of whether or not their daughter occupied the rental unit. The Landlord provided a bank statement and cell phone bill from his daughter, but she was not present to testify or be cross

examined. I find that the documents she provided do not identify or establish that she occupied the rental unit located in the lower part of the house.

Section 51(2) of the Act provides that the Landlord must pay compensation to the tenant if the landlord does not establish that they occupied the unit within a reasonable period after the effective date of the notice and that the daughter used the unit for at least six months.

I find that the Landlord breached section 51(2) of the Act and must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I grant the Tenant a monetary award in the amount of \$10,800.00 which is 12 months of rent that was payable under the tenancy agreement.

I have considered whether or not there were extenuating circumstances present that stopped the Landlord from accomplishing the purpose of the Notice. Since the Landlord's position was that the daughter did occupy the rental unit, I find there are no extenuating circumstances present.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$10,900.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord did not use the rental unit for the purpose stated within the Two Month Notice.

The Landlord must pay the Tenant the amount of 12 months' rent payable under the tenancy agreement and recovery of the filing fee.

The Tenant is granted a monetary order in the amount of \$10,900.00.

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 26, 2023

Residential Tenancy Branch