



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened as a result of two separate applications for monetary compensation relating to a 2 Month Notice to End Tenancy for Landlord's Use (the Notice) from the Tenants in two different rental units within the building, pursuant to the *Residential Tenancy Act* (the Act). Both applications were set to be heard at the same time.

The Tenants from both units, for both applications, were present at the hearing. The Landlords were also present at the hearing. All parties provided affirmed testimony.

Unit #4

The Tenants from unit #4, MD and CR, were present at the hearing. They stated they served their Notice of Dispute Resolution Proceeding and evidence to the Landlord by registered mail. The Landlords confirmed that they received this package. The Landlord stated they did not serve their evidence to the Tenants, and only uploaded it to the RTB website. As stated in the hearing, all evidence must be served to the other party, as well as the RTB, as per Rule 3.1. As this was not done, and without any compelling reason, I find the Landlord's evidence is not admissible and will not be considered further.

Unit #3

One of the Tenants from unit #3, AG, was also present at the hearing. He stated he served his Notice of Dispute Resolution Proceeding and evidence to the Landlord by registered mail. The Landlords confirmed receipt of the above noted packages. The Landlord stated they did not serve their evidence to the Tenants, and only uploaded it to the RTB website. As stated in the hearing, all evidence must be served to the other

party, as well as the RTB, as per Rule 3.1. As this was not done, and without any compelling reason, I find the Landlord's evidence is not admissible and will not be considered further.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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 Matters

I note the following relevant portions of the Rules of Procedure:

Introductory matters

2.10 Joining applications

Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:

- a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;*
- b) whether all applications name the same landlord;*
- c) whether the remedies sought in each application are similar; or*
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.*

These applications have been joined since they pertain to similar issues, although they are for different rental units. Both files will be heard today and there will be two different outcomes, one for each application/rental unit, below, as part of this decision.

Issues to be Decided

- Are either of the two sets of Tenants entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

Both Landlords confirmed that they are both registered owners of the property, and were both involved in issuing the 2 Month Notices to the different rental units in the house. The Landlords explained that this is a 4 plex house, and they ended the tenancies in all of the rental units for the same reason, as laid out below. However, only units 3 and 4 filed this application.

Unit 3

Both parties agree that monthly rent was set at \$1,450.00 per month. The Tenants moved out on June 1, 2022.

A copy of the Notice was provided into evidence. The Notice was issued under the following grounds:

- 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 Landlord or Landlord's spouse

Unit 4

Both parties agree that monthly rent was set at \$1,877.75 per month. The Tenants moved out on May 1, 2022.

A copy of the Notice was provided into evidence. The Notice was issued under the following grounds:

- 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 Landlord or Landlord's spouse

Submissions for unit #3

DH stated that he moved into unit #3 sometime in July or August 2022. Although he was not clear on when. DH stated that he started sleeping in the rental unit sometime in mid-July 2022, and he stated he has not put this particular unit on AirBnb. DH stated that he lives in the unit alone, and denied that he has rented the unit out.

The Tenant from unit #3 stated that he kept an eye on the house and never saw anyone move into unit #3, which is why he filed this application.

Neither party pointed to any of the documentary evidence.

Submissions for unit #4

EH stated that he and his common-law spouse and two kids, have moved into unit #4, but he could not recall the exact date this occurred. EH stated that he has been waiting for his other house to sell, so he hasn't gotten around to switching the address on his driver's licence yet, but his spouse has. EH stated that he did some renovations before moving in, but asserts he moved in within a couple months of the tenancy ending. EH stated that he listed unit #4 on AirBnb as available for rent, starting last summer. EH stated that the unit continues to be on AirBnb but he stated that it only rents out about 25% of the time, since some periods are slowed. EH stated that when unit #4 rents out under AirBnb, he and his wife and kids will go and stay in another unit.

The Tenants stated that they saw the AirBnb listing for unit #4 go up around a month after they moved out and they kept an eye on the listing details for this unit and noted that in July, 25 of 31 days were booked for this unit on AirBnb and 14 of 31 days were booked in August 2022. The Tenants stated that unit #4 continues to be rented off and on and has since they moved out.

Analysis

With respect to the Tenants' request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*

- *used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- *accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlords to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. The Landlords selected the following ground:

- 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 Landlord or Landlord's spouse

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

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.*

In this case, I note the onus is on the Landlords, as joint owners, (both EH and DH) to prove that they accomplished the stated purpose on the Notice, which is that they (or a spouse) would move in, to both units noted on this application (#3 and #4). The Landlords had no admissible documentary evidence showing they, or a spouse, moved into the rental unit. The Tenants, MD and CR, pointed to the AirBnb listings provided into evidence, to show the Landlords are actively renting out unit #4, and are not residing in the unit as their residence. Further, with respect to unit #3, AG stated that he has not seen anyone move into his old unit, and he does not believe the Landlords moved into his unit.

Overall, I find the Landlords have failed to sufficiently demonstrate that they, or a spouse, have moved into either of these two rental units, particularly given the allegations regarding using AirBnb on an ongoing basis, rather than residing there full time. The AirBnb usage appears to have started within a month of the tenancy ending, and continues to this day for at least one of the units. I find the Landlords have failed to meet the onus placed on them to demonstrate they accomplished the stated purpose behind the Notice, which is that they, or a spouse, moved in for a period of at least 6 months. I find the Landlords breached section 51(2) of the Act in this regard for unit #3 and unit #4, which typically entitles the Tenants to compensation, respectively. However, the issue now becomes whether or not the Landlords have sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenants compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

The Landlord did not speak to any extenuating circumstances directly. I acknowledge that one of the Landlord's is waiting for his other house to sell, and this may have delayed some of this plans and address changes. However, I am not satisfied that this is sufficient to show there were "extenuating circumstances", such that it would be unreasonable or unjust for the Landlords to pay the compensation. I do not find any of the reasons or issues noted by the Landlords show there were "extenuating circumstances".

I award the Tenants for unit #3 \$17,500.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$1,450.00, plus \$100.00 for the filing fee they paid.

I award the Tenants for unit #4 \$22,633.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$1,877.75, plus \$100.00 for the filing fee they paid.

Conclusion

I grant the Tenants a monetary order in the amount of \$17,500.00 and \$22,633.00, respectively. This order must be served on the Landlords. If the Landlords fail to comply

with this order the Tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 4, 2023

Residential Tenancy Branch