



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) and to recover the cost of the filing fee.

The tenant and the landlord attended the hearing. The hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act and recovery of the cost of the filing fee?

Background and Evidence

The tenant submitted that the tenancy started on July 1, 2016 and ended on May 25, 2022, with the monthly rent being \$919.50 at the end of the tenancy. Filed in evidence was the written tenancy agreement.

The tenant's monetary claim is \$11,034, which is the equivalent of 12 times the monthly rent payable at the end of the tenancy.

The tenant wrote in their application the following:

The landlord specifically stated that the rental unit was being taken back to be occupied by the landlord for extra family space. Shortly afterward, the landlord started renovating the suite including tearing out the ceiling and soundproofing it, upgrading flooring and re-painting the suite. Following renovations, the suite is now re-listed on Facebook Marketplace asking a rental amount of \$1650.00 per month.

[Reproduced as written]

The Notice received from the landlord was dated March 31, 2022, listing an effective move-out date of May 31, 2022. Filed in evidence was the 2 Month Notice.

The reason for ending the tenancy states that the rental unit will be occupied by the landlord or the landlord's spouse.

In response to the tenant's claim, the landlord proceeded first in the hearing and provided the following testimony: The landlord just wanted to not have tenants anymore in their home. The landlord occupied the upper portion of the home and had 2 separate rental units in the lower level, including this rental unit. The landlord's daughter is getting older, 8 years old, and she is having friends over now to play and they wanted the space for their daughter's play area. The intent behind the 2 Month Notice was to have the entire house for use by their family. They just want to enjoy their home and

did not want to look out their window to see tenants' cars or alter their family life to accommodate tenants in the home. The landlord's wife was working from home now.

After the tenant vacated, their daughter began playing in the rental unit, and about a month later, they began making renovations, lasting one month, and after that, their daughter began using the rental unit again for a play area. The renovations included a new ceiling, insulation, and drywall and finished approximately the first week in August.

The landlord's finances took a turn for the worse, and even though they had not initially wanted to rent out the rental unit, they ultimately did due to their reduction in income. Filed in evidence was a written tenancy agreement, which showed a new tenancy with another tenant began on December 1, 2022, for a fixed-term through November 30, 2023, and monthly rent of \$1,650.

In a written statement, the landlord submitted that they set up a craft table and a slime station for their daughter's playing and used the two closets, kitchen cabinets and fridge for storage. In addition, they have used the bedroom in the rental unit as a guest room when they had family stay overnight.

In response, the tenant provided the following testimony: They did not originally plan to apply for the compensation, as they believed the landlord that their intent was not to rent. Instead, the landlord just wanted a party room. After vacating, they were told by 2 people that the rental unit was being listed for rent. They incurred a great cost in having to move and the landlord refused to allow more time to find another rental unit in the current market. About a month after they moved out, the renos began.

The tenant's relevant evidence included the rental unit listings on Facebook marketplace.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The landlord must prove on a balance of probabilities that they complied with the reason listed on their 2 Month Notice.

The 2 Month Notice was given to the tenant listing that the landlord or landlord's spouse will occupy the rental unit.

The Act provides that 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, or if 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, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

Having reviewed the evidence, I find the rental unit was advertised for rent no later than November 3, 2022 for a new tenant, according to the Facebook posts. I find the landlord's own statements in their advertisements contradict their testimony.

The landlord said they finished the renovations by the first week in August and their daughter returned to playing in the rental unit, yet in one listing the landlord wrote they have a few items to finish before move in, again this was in early November 2022. I find this shows the renovations were continuing, rather than having finished in early August 2022, and therefore, I find this contradicts the landlord's affirmed testimony.

I gave great weight to the many photographs from the Facebook listing. The rental unit was completely empty. There was no evidence that the landlord's daughter used the rental unit as a play area or that it was being used at all. There was no craft table or slime station, or any other sign the rental unit being used in any way. The rental unit was immaculate and free of any item at all. Apart from that, the landlord failed to provide any evidence that the rental unit had initially been used as a playroom or any family living, as claimed at the hearing.

I find the testimony from the landlord shows that the landlord began the renovations to the rental unit approximately 1 month after the tenant vacated and that the evidence from the advertisements is that the renovations continued through November 2022, prior to the new tenant moving in on December 1, 2022 for a substantial rent increase of \$730.50 to \$1,650 per month.

For these reasons, I find on a balance of probabilities that the landlord submitted insufficient evidence that the rental unit was used for the stated purpose for 6 months after the effective date of the Notice, or May 31, 2022, which in this case, was for the landlord to reclaim the rental unit for a living space.

The Act allows the landlord to be excused from paying the 12 months monetary compensation if extenuating circumstances prevented them using the rental unit for the stated purpose. The landlord claimed they did use the rental unit for the stated purpose of reclaiming the rental unit for a living space for 6 months, meeting the 6-month occupancy requirement. As the landlord did not argue that they had extenuating circumstances for this reason, I find the landlord submitted insufficient evidence of extenuating circumstances as contemplated by the Act and Tenancy Policy Guideline.

For the above reasons, I find the tenant is entitled to monetary compensation equivalent to 12 months rent as the rental unit was not used for the stated purpose listed on the 2 Month Notice for 6 months.

I grant the tenant a monetary award of **\$11,034**, which is the equivalent of the monthly rent of \$919.50 for 12 months.

I find merit with the tenant's application and award them recovery of their filing fee of **\$100**, pursuant to section 72(1) of the Act.

I grant the tenant a monetary order (Order) of **\$11,134**.

Should the landlord fail to pay the tenant this amount without delay, the tenant must serve the Order on the landlord for enforcement purposes by means under section 88 of the Act. The landlord is informed that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenant's application for monetary compensation is granted.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 24, 2023