



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, another tenant not listed on the application, 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 landlord confirmed receipt of the tenant's application and attached evidence. The Residential Tenancy Branch (RTB) digital file on this application did not show any evidence from the landlord. The landlord said they served their evidence to the tenants by text message. The tenants denied receiving by proper service.

The landlord's evidence was not before me and no evidence from the landlord was considered.

I have reviewed all oral, written, and other evidence before me that met the requirements of the 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 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 November 1, 2016, with another landlord, who then sold the property to another landlord, who in turn, sold the property to the current landlord. The monthly rent listed on the tenancy agreement filed in evidence was \$1250 and the tenant said that the monthly rent at the end of the tenancy was \$1250. The tenant submitted they vacated the rental unit on May 1, 2022.

The tenant's monetary claim is \$15,000, which is the equivalent of 12 times the monthly rent payable under the tenancy agreement, at \$1250 per month.

The tenant wrote in their application the following:

We were served with a notice to end tenancy for landlords use of Property on March 1, 2022 we vacated on May 1, 2022. It is now July and the unit is still vacant and renovations have been ongoing for months.

[Reproduced as written]

The Notice received from the landlord was dated February 28, 2022, listing an effective move-out date of May 1, 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.

The landlord testified as follows:

They purchased the property about a year prior to ending the tenancy, and did move into the rental unit “3 months ago”. The house was in rough shape, there were leaks everywhere, they spent \$1,500 to clean the carpets and the unit is still not livable.

There are renovations and repairs ongoing still. They did not inspect the rental unit prior to purchasing as they lived out of town and trusted the word of their realtor. The landlord was in school at the time in another province. They first saw the rental unit, briefly, 3 weeks after buying it. Purchasing the property has cost them their life savings and have been unable to sleep.

The bathroom floor was rotted, the sink cabinet was falling apart, and they have spent every last penny they have.

Tenant’s response –

The tenant testified as follows:

The floor had been rotting while they were living there and there were leaks in the bathroom. A plumber replaced the toilet. They kept telling the landlord about the leaks and they were never fixed. In addition, there was a hole in the ceiling when they lived there, but does not know if the hole was there when the landlord and their realtor first viewed the home.

There were no permits for electrical work, even though a wall has been removed. The land title records show this landlord has done two other flips.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

In the case before me, the undisputed evidence is that the landlord issued the tenant a 2 Two Month Notice to End Tenancy for Landlord’s Use of the Property, pursuant to

section 49 of the Act, for a listed effective move-out date of May 1, 2022. The 2 Month Notice was given to the tenant listing that the landlord or landlord's spouse will occupy the rental unit.

The tenant complied with the effective date of the Notice and vacated the rental unit.

Section 51(2) 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.

The effective date of the Notice here is May 1, 2022, meaning that the landlord must begin occupying the rental unit for a residential purpose within a reasonable time after May 1, 2022.

First of all, the landlord said that they moved into the rental unit in 3 months prior to the hearing, which I find was not within a reasonable period of time after the tenancy ended on May 1, 2022. The landlord gave no explanation, that if they did actually move in, why it was not until well after 6 months from the effective date of the Notice.

The landlord however provided insufficient evidence that they had moved in at all.

The landlord failed to produce any records of their residency at the rental unit, such as their driver's licence showing their new address to be the rental unit, a change of address, a government issued identification, proof of bank records, utilities bills for that specific unit, or insurance records.

Without this documentary evidence, I find there is insufficient evidence to prove occupancy or residency of the home. The tenant's application was filed on July 25, 2022, was served to the landlord by registered mail on August 24, 2022, and the landlord confirmed receiving it. This would allow the landlord ample time to provide updated proof they moved into the rental unit.

For this reason, I find the landlord submitted insufficient evidence that they moved into the rental unit within a reasonable period of time after the tenancy ended on May 1,

2022, or that they moved in at all. Therefore, I find that I do not have to consider extenuating circumstances.

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

As a result, I grant the tenant a monetary award of **\$15,000**, which is the equivalent of the monthly rent of \$1250 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 **\$15,100**.

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 landlord.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent is granted. The tenant has been granted a monetary order for \$15,100.

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 10, 2023

Residential Tenancy Branch