



Dispute Resolution Services

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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 of \$14,655.95 from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated April 16, 2022 ("Two Month Notice"); and to recover her \$100.00 Application filing fee.

The Tenant and the Landlords, L.Z. and Z.L., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. Z.L. translated for her mother, L.Z., throughout the hearing, as Z.L. does not speak English.

During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

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 Tenant testified that she served the Landlords with her Notice of Hearing documents and evidence by Canada Post registered mail, sent on August 24, 2022. The Tenant provided Canada Post tracking numbers as evidence of service. The Landlords said they did not receive any package from the Tenant, although I explained that they would have received notices in the mail from Canada Post saying that the package was available for pick-up. The Tenant said that the envelopes were returned unopened a few months after she mailed them.

According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Tenant served the Notice of Hearing

documents and her evidence to the Landlords pursuant to the Act. I, therefore, admitted her Application and evidentiary documents.

The Landlords had submitted evidence to the RTB; however, they said they did not serve the Tenant any of it, because they did not know that they had to do this. I said that the instructions would have been contained in the packages the Tenant served the Landlords via registered mail, had they picked them up from the post office. Further, if the Landlords had been uncertain about anything, they could have called the RTB for assistance. Rules of administrative fairness dictate that I cannot consider one party's evidence, if it has not been served to the other party pursuant to the Act.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these in the hearing. Z.L. also provided her email address for Decision delivery. The Parties confirmed their 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 Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are 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 the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on October 1, 2020, and ran to September 30, 2021, and then operated on a month-to-month basis. They agreed that the Tenant was required to pay the Landlords a monthly rent of \$1,150.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$575.00, and a pet damage deposit of \$575.00.

The Tenant explained her claim in the hearing, as follows:

I should note that the upstairs tenant also received a two month notice on the

same day as I did for the same reason – that the Landlord's mother or father or spouse would occupy the unit. So, we all moved out by that date.

In early July, I saw on [social media advertising site] that a property manager had posted both suites up for rent with a higher rent amount. The new rent for mine was \$1,500.00 + utilities. I submitted a screen shot of the property manager [S.L.], and a screen shot of the ad for rent for \$1,500.00. It stated in there to submit an application for July. My old suite was rented out in July.

I asked the Tenant how she knew that it had been rented out, and she said:

Because I only moved two blocks away, and I saw the new tenants. And the neighbours on both sides said it was rented out, and the top suite, as well. We thought it was not a true statement that the family was going to move into the suite. It was just a way to have us vacate for rent at a higher price.

The Landlord responded:

She said that the upstairs tenant had a notice, too. The reason he was given the notice was because they were short on the rent – not paying the full rent and utilities. And not paying rent on time.

For [the Tenant], we needed to give the unit to my Dad. He was living there in July, and until August, when he came to visit me in the U.S. Even though the intention was not to occupy the basement suite, he wanted to stay with me for the long-term. But then my Mom was worried about the vacancy tax and then she posted the suite. But he returned to the basement unit. We never rented it out.

I asked the Landlord who is living there now:

[My Dad] has a key to the house now, although he is living in China. He is travelling after his retirement. Nobody is in the basement right now. He has his mattress and bedding there now.

The Tenant said:

They accidentally sent me an email for the upstairs tenant – both units were given the same reason - both were put up for rent in the beginning of July on [social media] advertising for a tenant to come in. I know that people did move into both

suites. I was kicked out of the home that me and my child lived in – kicked out for no reason. I was an excellent Tenant. I paid on time, kept the grounds nice. I pay way more for a two-bedroom place now, and I have gone through a lot of hardship. Times are different from October 2019. I feel very put out for no reason, so the one year's rent compensation, plus my moving expenses should be awarded. They did rent it out for \$1,500.00 after June 30. Even if they had asked me to pay \$1,500.00, I would have happily paid that, because I would have wanted to stay there to get my kid through high school at that location.

The Tenant's evidence included an advertisement for a rental unit with a photograph, and a map showing the location, so that the Tenant knew it was her rental unit. They are asking the same amount for the utilities as they asked from the Tenant – "around 170". As the Tenant said, the rent was set at \$1,500.00 per month. It said to email the Landlord for an appointment for a showing on a Sunday in July. It said that Saturday was already fully booked for showings.

I asked the Landlords why they advertised it for rent for July, if their father was going to move in, as set out in the Two Month Notice. They said:

The original plan was for my Dad to occupy the basement, after [the Tenant] moved out, then a couple months later Dad changed his mind, because I bought a condo in the US, and he wanted to move there. My Mom thought he was moving away for good and she was aware that she would have to pay the vacancy tax, so that's why she made the wrong decision. But then my Dad didn't want to stay with me, and he moved back after a couple months and then to stay in that suite again. He negotiated with the [tenants] and refunded them and their moving cost. So we didn't collect any rent.

The Tenant replied:

I'd just like to drive the point home that the Landlord ended the tenancy and didn't comply with the Act or use it for the stated purpose, which was clearly set out in the [Two Month Notice], so I am owed the compensation for that one year's rent of that unit, plus my filing fee and moving expenses. I really hope that they don't do this to other people. It caused me a lot of pain and suffering and stress.

The Landlords said:

This house belongs to my Dad. We didn't make any profit. We didn't receive any

rent and utilities. It's all in our name. [Our evidence] shows that the utilities was lower than usual, because the house was not occupied and the basement is empty. My Dad has been living there intermittently. First, and he is just recently back to China for a vacation. It's just not occupied 100% of the time.

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 16, 2022, the Landlord indicated that the Landlord or a close family member, intended to occupy the rental unit.

The Tenant provided testimony and documentary evidence that instead of being occupied by the Landlord or a family member, the rental unit was rented out to another tenant for \$350.00 more than the Tenant was paying. The Tenant provided documentary evidence by way of the online listings showing the rental unit as available.

The Landlord acknowledged that they rented the unit out in August and September 2022, until the father decided to move back in. However, rather than moving in, the evidence before me is that the father is in China.

I find that the reimbursement of the rent paid by these other tenants does not detract from the fact that the Landlords failed to fulfill the requirements of the Act regarding this Two Month Notice.

I accept the evidence that within the first six months after the Tenant vacated the rental unit, the Landlord did not use it for the purposes stated on the Two Month Notice. Consequently, I find that pursuant to sections 51 and 67 of the Act, the Tenant is entitled to a monetary award of **\$13,800.00**, the equivalent of 12 times the monthly rent of **\$1,150.00**. Moving costs are not recoverable under the legislation.

Given the Tenant's success in her Application, I also award her recovery of her **\$100.00** filing fee, pursuant to section 72 of the Act. The Tenant is granted a **Monetary Order** from the Landlords of **\$13,900.00** pursuant to section 67 of the Act.

Conclusion

The Tenant is successful in her Application, as she provided sufficient evidence that the Landlords failed to use the rental unit for the purpose set out in the Two Month Notice that they served the Tenant on April 16, 2022. Further, I award the Tenant recovery of her **\$100.00** Application filing fee from the Landlords.

I grant the Tenant a **Monetary Order** from the Landlords of **\$13,900.00**. This Order must be served on the Landlords by the Tenant and may be filed in the Provincial Court (Small Claims) and 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: May 03, 2023

Residential Tenancy Branch