



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC

Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on September 4, 2022 seeking compensation related to the Landlord’s ending of the tenancy. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 30, 2023.

Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, the Landlord confirmed they received the Notice of Dispute Resolution Proceeding and evidence from the Tenant. The Landlord provided a notarized declaration for this matter; however, they did not provide this to the Tenant, and it receives no consideration herein for that reason.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”), pursuant to s. 51 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement, signed with the Landlord on September 5, 2021. The tenancy started on September 7, 2021 on a month-to-month basis. The tenancy agreement establishes that the rent was \$2,500 per month and this

did not increase over the course of the tenancy. Both parties confirmed this information in the hearing.

The Landlord issued the Two-Month Notice on June 30, 2022, for the tenancy end date of August 31, 2022. The reason indicated on the document was that the Landlord or the Landlord's close family member would occupy the rental unit. The Tenant did not dispute the Landlord issuing the Two-Month Notice.

In the hearing, the Tenant provided that they moved out from the rental unit on July 31, 2022. This was one month early, and the final month of the tenancy was not rent-free. In the Tenant's evidence is a letter dated July 27, 2022, giving the final move-out date of August 6, 2022. This sets out s. 50 of the *Act*, and the Tenant provided a forwarding address at that time.

After this, the Tenant found an online advertisement showing the rental unit was available for rent. The ads in the Tenant's evidence are dated August 13 and August 15, 2022. In one case an agent of the Landlord (actually the Landlord's cousin) posted the ad; the Tenant identified this person as their regular contact during the tenancy. The second ad was posted by a real estate agent. The Tenant identified this real estate agent as the person who was present at the start of the tenancy, presenting the tenancy agreement at that time.

Both ads show a rent amount of \$3,800 per month. The ads have photos of the rental unit, and the individual rental unit number is visible on the photos.

In the hearing, the Tenant stated they had friends who tried to contact the real estate agent about the rental unit advertisement; however, the real estate agent did not respond. The Tenant also visited to their former rental unit to collect mail and there was a lot of people there, approximately one month after they moved out, and more recently in April 2023.

In response to this, in the hearing, the Landlord stated that their family was living in the rental unit, with family members arriving from another country, and a cousin they had who was still living there. Their family came around June 22, and lived in the rental unit for approximately 3 or 4 months, with their cousin still living in the rental unit.

The Landlord stated they had no idea about the rental unit advertisements online. They stated: "somehow the Tenant figured out it was me". Their cousin, who was their agent during this past tenancy, "does these kinds of things" with "other properties". The

Landlord confirmed they had some dealings with the real estate agent who posted a separate advertisement on August 15.

The Landlord in the hearing questioned whether they have to grant the Tenant one month rent-free in line with the Two-Month Notice, even though the Tenant moved out prior to the set end-of-tenancy date of August 31, 2022.

Analysis

The *Act* s. 49 allows for a landlord to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in the situation where a landlord issues a Two-Month Notice. This is covered in s. 51:

- (1) A tenant who receives a notice to end tenancy under s. 49 is entitled to receive from the landlord . . . an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (2) Subject to subsection (3), the landlord . . . must pay the tenant . . . 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 of 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 . . . if, in the director's opinion, extenuating circumstances prevented the landlord . . . 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.

The *Residential Tenancy Policy Guidelines*, in particular *50. Compensation for Ending a Tenancy* provides that extenuating circumstances are those "where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control."

The Landlord must prove that they accomplished the purpose for which the tenancy ended, within a reasonable period or for at least 6 months' duration. The burden of proof is on the Landlord to show this was so.

Here, the Landlord issued the Two-Month Notice on June 30, 2022. The Tenant did not challenge the validity of the Two-Month Notice and moved out by July 31, 2022. Approximately two weeks after their move out, the Tenant discovered the online ads.

I find the Landlord did not provide sufficient evidence to show they accomplished the stated purpose for ending that Two-Month Notice. The Landlord described family members living in the rental unit, coming from a different country, but there was a lack of detail on this stated point. There was no information on dates, number of family members, names or the length of their stay. The Landlord did not explain this in sufficient detail in the hearing. I find the Landlord not credible on this individual point without evidence, or more details in their description.

The Landlord's cousin was identified by the Tenant as the source of one advertisement. The Landlord stated this family member was living in the rental unit for some time, though again did not specify dates. This does not qualify as a close family member who occupied the rental unit. As set in s. 49(1) of the *Act*, "close family member" means a parent, spouse or child, or that of their spouse.

I also find it more likely than not that the Landlord advertised the rental unit's availability because there were two separate advertisements, from two different sources, on August 13 and August 15. The Tenant identified the real estate agent as being present at the start of the tenancy in some capacity.

The ads are consistent in the amount of rent being asked -- \$3,800 -- and have the same images of the rental unit, with at least one image showing the individual rental unit number.

I find the evidence shows the Landlord did not take steps to accomplish the stated purpose of issuing that Two-Month Notice. I find the evidence shows they sought new tenants by mid-August. I find as fact that the Landlord issued a Two-Month Notice ostensibly for a close family member's use of the rental unit, and they did not accomplish that purpose within a reasonable amount of time, or for a six-month duration.

The Landlord gave no information about extenuating circumstances; therefore, this second part of the issue is not relevant.

I find this is a situation where s. 51(2) applies. For this, the Landlord must pay the equivalent of 12 times the monthly rent payable under the tenancy agreement. This is the amount of \$30,000 as claimed by the Tenant.

Both parties raised the issue of the amount of one month's rent payable under the tenancy agreement.

The *Act* contains the following sections that answer this question, as set out in the Tenant's 10-Day Notice to Move Out Early letter to the Landlord.

- 50** (1) If a landlord gives a [Two-Month Notice] the tenant may end the tenancy early by
- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice or director's order, and
 - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
- (1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

I find the Tenant fulfilled the requirement for s. 50(2) as set out above. I find both parties agreed that the Tenant paid rent for that final month of July 2022.

I find s. 50(2) applies to this situation where the Tenant already paid rent for the month of July 2022. The Landlord must refund the rent the Tenant paid for that period, being \$2,500.

I find this is a situation where s. 51(1.2) (alternately, s. 50(2)), applies. The Landlord must pay the amount of one month's rent payable under the tenancy agreement. This is the amount of \$2,500, as claimed by the Tenant.

Conclusion

Pursuant to s. 51 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$32,500. The Tenant must serve the Money Order to the Landlord as soon as possible. Should the Landlord fail to comply with this Monetary Order, the Tenant may file it with the Small Claims Division of the Provincial Court where it may 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 s. 9.1(1) of the *Act*.

Dated: May 30, 2023

Residential Tenancy Branch