



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 51(2) for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

S.H., N.M., and A.H. appeared as the Tenants. K.H. appeared as agent for the Tenants. R.L. appeared as the Landlord and was represented by counsel, M.G..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Are the Tenants entitled to compensation under s. 51(2) of the *Act*?
- 2) Are the Tenants entitled to their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The parties confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on April 1, 2021.
- The Tenants vacated the rental unit on May 31, 2022.
- At the end of the tenancy, rent of \$2,334.50 was due on the first of each month.

I am provided with a copy of the tenancy agreement.

The parties confirm that the landlords served a Two-Month Notice to End Tenancy for Landlord's Use of the Property, signed April 27, 2022 (the "Two-Month Notice"), on the tenants. I am provided with a copy of the Two-Month Notice by the Tenants, which lists an effective date of June 30, 2022 and states it was issued on the basis that a parent of the landlord would occupy the rental unit.

Are the Tenants entitled to Compensation under s. 51(2)?

Under to s. 51(2) of the Act and provided s. 51(3) does not apply, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement if they received a notice to end tenancy issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

Landlord's counsel explained that the Landlord's father, G.L., moved into the rental unit, with the Landlord confirming he did so in early July 2022. The Landlord's evidence includes an email from M.L. to the Landlord dated March 24, 2023 confirming the Landlord's father moved into the rental unit in July 2022.

As explained by counsel, the Landlord and her family, including her father and mother, resided in the upper portion of the property. I am told that the Landlord's father has something of a nocturnal lifestyle, which caused stress between he and his wife, such that it was decided he would reside downstairs so that he would not disturb his spouse or other family members. Counsel explained that the father has a hearing impairment such that he is unaware of the noise he makes when he is awake during the night.

Counsel directs me to various documents in evidence, including a receipt for a mattress dated August 25, 2022 as well a photograph showing family members painting a bedroom in the suite on August 16, 2022. Other evidence provided by the Landlord includes utility statements in the father's name listing him in the basement suite, as well as driver's licence issued in November 2022 listing the father's address as the basement suite. I am told by counsel that the father continues to reside within the rental unit.

The Tenants' agent advises that the Tenants scrambled to find alternate accommodation after they were served and managed to secure a place but are now paying \$3,300.00 per month in rent. I am told by the agent that the Tenants discovered that the Landlord had listed the rental unit for rent on craigslist some 6 weeks after vacating the rental unit. The Tenant's evidence includes screenshots of the craigslist ad.

The agent advises that he had various correspondence in response to the advertisement with the Landlord, all of which are put into evidence by the Landlord. One in particular from the Landlord sent on July 17, 2022 saying that the Landlord had "a tentative verbal agreement with a potential renter who is currently overseas" and that if there were any issues, they would let them know and give more info on the rental unit.

The Landlord's evidence includes written submissions from the Landlord in which she acknowledges that the advertisements for the rental unit were posted but argued that this was done merely to test the market value for rent. The Landlord explains that she was bullied at work and wished to explore how much rent she could obtain such that she could quit her job. She further states that she considered the sale of the house as well due to the financial pressure of paying the mortgage while staying in a job that was causing her anxiety and depression. The Landlord in her written submissions emphasized the rental unit was never occupied by another tenant.

I accept that the advertisement posted by the Landlord raises reasonable suspicion that there may have been ulterior motive in serving the Two-Month Notice. However, the

question is not whether there was ulterior motive or bad faith in issuing the Two-Month Notice but whether the parent, in this case the father, did in fact move into the rental unit. The fact remains, I have no reason to believe that the Landlord rented the suite to others or that anyone other than the father moved into the rental unit. Further, nothing under s. 51(2) of the *Act* prevents a landlord from posting an advertisement for a rental unit and the explanation provided by the Landlord is at least plausible such that I cannot draw an inference that the Landlord is being untruthful.

On balance, I have no evidence to support a finding that the Landlord is being dishonest when she says that he did move into the rental unit, which is confirmed by the various invoices provided. I accept that some of this evidence was generated after the Tenants filed and served their application, which may raise the argument that it is self-serving. In fairness, it seems likely that that is taking place here to a certain extent. However, mere suspicion of ulterior purpose is irrelevant. What is relevant is whether the Landlord's father did move into the rental unit, which I find the Landlord has demonstrated.

The Tenant's agent argued that the Landlord's evidence shows, at the earliest, the father moved into the rental unit in August 2022, which is more than two months after the Tenant's vacated on May 31, 2022. However, the wording of s. 51(2) of the *Act* is clear that the reasonable period is not when the tenancy ended but the effective date of the notice. In this instance, I have the Landlord's affirmed testimony, which is supported by the statement from M.L., that her father moved-in in early July 2022. On the evidence before me, I accept that he did so.

I find that the Landlord has established that her father moved into the rental unit in July 2022, which is a reasonable period after the effective date of the Two-Month Notice. I further find that the Landlord has demonstrated that the father has resided within the rental unit for at least 6 months.

Accordingly, I find that the Tenants are not entitled to compensation under s. 51(2) of the *Act*.

Conclusion

I dismiss the Tenants' application under s. 51(2) for compensation without leave to reapply.

As the Tenants were unsuccessful, I find that they are not entitled to their filing fee. Their claim under s. 72 of the *Act* is dismissed without leave to reapply.

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 25, 2023

Residential Tenancy Branch