



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on August 26, 2022. They are seeking compensation related to the Landlord ending the tenancy, and the Application filing fee.

The matter proceeded by hearing on May 24, 2023 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

At the outset of the hearing, each party confirmed their receipt of the other’s prepared evidence package. On this assurance, the hearing proceeded as scheduled.

Preliminary Matter – identified issue on Tenant’s Application

From the Tenant’s completed Application, and the substance of their claim for compensation, I find they are seeking compensation related to the Landlord ending the tenancy with a Two-Month Notice to End Tenancy for Landlord’s Use of Property (the “Two-Month Notice”). On their Application, the Tenant indicated a more general form of compensation. Pursuant to s. 64(3)(c) of the *Act*, I amend the Tenant’s Application, shown in the following issues list.

Issues to be Decided

Is the Tenant entitled to compensation for the Two-Month Notice for Purchaser’s Use of Property, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant did not provide a copy of the tenancy agreement in their evidence for this hearing. The Landlord also did not provide that document. On my direct questioning for confirmation of details, both parties in the hearing agreed to the following:

- the tenancy started on September 4, 2014, meaning the Tenant resided in the rental unit for approximately 7.5 years
- the rent amount at the end of the tenancy was \$1,551.95 – the Tenant during the hearing stated this was the amount on their final two rent receipts they retained in the records
- the Tenant moved out from the rental unit on March 28, 2022.

As it appears in the Tenant's evidence, the Landlord ended the tenancy by serving the Two-Month Notice to the Tenant on January 24, 2022. The end-of-tenancy date was March 31, 2022. The indication by the Landlord on page 2 of the document is that "The child of the landlord or the landlord's spouse" will occupy the rental unit.

The Landlord presented that their child moved in after the tenancy ended. The older sibling helped their younger sibling move into the rental unit. This younger sibling presented that they have both day and night jobs. They parked their vehicle in the garage from the time they moved in. The younger sibling had to reside with their older sibling elsewhere for "a couple of days" in approximately August 2022; otherwise, they have lived in the rental unit since April 2022.

The Landlord provided an image of a written statement dated September 20, 2022. This provides that two others stayed in the rental unit, in the month of August 2022 for "a couple nights." They stayed in that rental unit for the purpose of work, being "tradepersons." In the hearing, the Landlord clarified that these people who stayed in the rental unit were relatives not renting, and the Landlord's child lived there the whole time these relatives stayed.

The Landlord also provided 6 pictures of the interior of the rental unit: 3 pictures show the kitchen area; 2 show the dining room; and one image shows the bedroom. In the hearing, the Landlord provided that the child of the Landlord who resides in the rental

unit “doesn’t have a lot of stuff.” The Tenant, in response, noted that the dining room table in place was their former patio table, left behind at the end of the tenancy.

The Tenant provided a statement from their former neighbours in their evidence, dated August 26, 2022. This sets out that “no one has moved into the house at [rental unit address].” In the hearing, the Tenant described their former neighbours walking past that same rental unit property for 6 continuous months. Some workers maintained occupancy in the rental unit for one to two weeks, stating to the neighbours at the beginning of August, that they worked for the Landlord and were building the Landlord’s new house in a separate area. Prior to August 2022, “the place was empty” as stated by the Tenant in the hearing. After this, no one lived in the rental unit and there were no lights on at night.

The Tenant provided 7 pictures to show the state of the rental unit. Two pictures show vehicles parked at the rental unit property; purportedly these belong to the workers who stayed at the rental unit. Those who were questioned by the Tenant’s former neighbours. There are interior pictures showing the empty kitchen/dining room, labelled as June and July. The grass was not cut, as shown in two pictures, for “all summer April – Sept 1”. A darkened image shows the master bedroom as “empty”, from April 1 – September 1, 2022.

Analysis

Under s. 49 of the *Act* a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. The Landlord here issued the Two-Month Notice for this reason.

There is compensation awarded in certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 51:

- (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 the landlord . . . does not establish that
 - (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
 - (b) the rental unit . . . has been 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 . . . from paying the tenant the amount required under subsection (2) 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, and
- (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 onus is on the Landlord to prove that they accomplished the purpose for ending the tenancy and that they used the rental unit for its stated purpose for at least 6 months. Failing this, the Landlord must present that there were extenuating circumstances which prevented this.

The original Two-Month Notice has the indication that "the rental unit will be occupied by the landlord or the landlord's close family member", with the indication that the child of the landlord would occupy the rental unit. I find the Landlord's stated intention was that their child would occupy the whole of the rental unit home.

The Landlord presented that they occupied the rental unit property. They stated this plainly in the hearing and explained the apparent lack of occupancy as that child having two jobs, and parking in the garage. The Landlord provided pictures to show use and occupancy of the rental unit.

As set out above, I find s. 51(2) applies to this situation. The Landlord did not provide sufficient evidence – in the form of documents/pictures, or testimony in the hearing – to show that their stated purpose for ending the tenancy was accomplished. They did not provide common proof in the form of utilities invoices showing the account holder, a driver's license showing the Landlord's child's address (as is legally required for insurance purposes), or other documents in the form of the Landlord's child's name combined with that of the rental unit address. This is common documentation that would normally be in place concerning a person's place of residence. Though the Landlord stated the child lived in the rental unit, there is a lack of evidence showing that.

The pictures provided by the Landlord fall short of showing that the rental unit is occupied. I find they show a completely empty rental unit and are undated. I find the Landlord's explanation that their child does not own many things does not adequately explain the empty rooms, a haphazard arrangement of a pizza box and two cans in the most basic dining arrangement, and a bedroom that is not used.

Again, the onus here is on the Landlord to show they accomplished the stated purpose for ending the tenancy. I find they have not shown their child occupied the rental unit. The Landlord did not present any statements or evidence on extenuating circumstances as set out in s. 51(3) above.

The Tenant provided sufficient evidence to show the opposite. Though this is third-hand evidence in the form of their neighbour's statements to the Tenant, I find this evidence outweighs that provided by the Landlord. This evidence from the Tenant's former neighbours accounts for workers living in the rental unit; I find it believable that the workers were staying at the rental unit address to complete a construction job on other property owned by the Landlord.

I consider the Tenant's evidence in relation to the pictures provided by the Landlord that show the rental unit to be empty. I find the Tenant's pictures they provided confirm the details shown in the Landlord's pictures, showing the rental unit to be entirely empty and not lived in.

Both the Tenant and the Landlord confirmed the rent amount that was in place at the end of the tenancy, and I made doubly sure to confirm this from both parties in the hearing. This amount was \$1,551.95.

For the reasons above, I find the Landlord did not present sufficient evidence to show their child occupied the rental unit, as stated in the Two-Month Notice. This means the Tenant is entitled to compensation for a breach of the *Act* by the Landlord. I grant the Tenant compensation in the amount specified by s. 51(2), the equivalent of twelve times the amount of the monthly rent of \$1,551.95. This is \$18,623.40.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the Tenant was successful in their claim, I find they are entitled to recover the \$100 filing fee from the Landlord.

Conclusion

Pursuant to s. 51(1) and s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of **\$18,723.40**. I provide the Tenant the Monetary Order in these terms, and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Monetary Order, the Tenant may file the Monetary Order in 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 24, 2023

Residential Tenancy Branch