



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on August 1, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Twelve times the amount of rent payable monthly under their tenancy agreement at the time their tenancy ended, pursuant to section 51(2) of the Act; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 pm on May 5, 2023, and was attended by the Tenant, a support person for the Tenant ES, a witness for the tenant CO, the Landlords, and an advocate for the Landlords LB. All testimony provided was affirmed. As the Landlords acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Issue(s) to be Decided

Is the Tenant entitled to twelve times their monthly rent pursuant to section 51(2) of the Act?

Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed to the following:

- The Tenant was served a Two Month Notice by email on March 24, 2022;
- The Tenant did not dispute the Two Month Notice;
- The Tenant vacated the rental unit on May 31, 2022; and
- Rent at the time the tenancy ended was \$2,100.00 per month.

The Two Month Notice before me has an effective date of May 31, 2022, and states that the notice has been served because the rental unit will be occupied by the Landlord or the Landlord's spouse.

There was no disagreement between the parties that the Landlords failed to occupy the rental unit within a reasonable period after the effective date of the Two Month Notice, and reside there for at least six months duration thereafter. Although the Landlords argued that they were forced to serve the Tenant with the Two Month Notice, as they themselves received a Two Month Notice from their own landlords, they later acknowledged that this was inaccurate and that they mutually agreed to end their own tenancy at their own landlords' request.

Although the parties agreed that the Tenant was served with the Two Month Notice on March 24, 2022, the Landlords argued that they had entered into a mutual agreement to end the tenancy with the Tenant, and therefore the Tenant should not be entitled to compensation. In support of this argument the Landlords submitted an excerpt from a text message to the Tenant on March 18, 2022, wherein the Landlords stated the following:

"Our realtor advised us to have 'mutually agreed' upon end of tenancy as we may not be technically using for 'landlords personal use' for an extended period of time. "

The Landlords argued that as the Tenant did not dispute Two Month Notice, request any sort of extension, or respond to the text message stating that they did not mutually agree to end the tenancy, they believed that the Tenant understood and was agreeable to the situation. The Tenant disagreed that they mutually agreed to end their tenancy.

The Landlords argued that the Tenant should also not be entitled to compensation as the Two Month Notice was served in good faith, the Tenant failed to dispute the Two Month Notice, and the Tenant did not suffer any loss because of the Two Month Notice as the Tenant was already planning to buy their own home. While the Tenant acknowledged that they did not dispute the Two Month Notice as they believed at the time that it had been served in good faith, they disagreed that they did not suffer any losses. The Tenant stated that April, May, and June are their busiest times at work, and although they had been planning to buy their own home, they would not have intentionally chosen to do so during those months. The Tenant states that they cried when they found out that the Landlords had sold the rental unit rather than occupying it, as they had not been ready to buy their own home but made it happen anyways, and selling a home is not grounds to end a tenancy under the Act. The Tenant stated that they incurred significant expenses to purchase a home earlier than anticipated and at a time when the market was poor, and to move.

The Landlords also argued that they should be exempted from paying the Tenant compensation under section 51(3) of the Act, as extenuating circumstances prevented them from occupying the rental unit as planned and required. The Landlords stated that when the Two Month Notice was served, AD was working in another city, and commuting back home weekly at their employer's expense. The Landlords stated that shortly after the Two Month Notice was served, AD's employer advised them that they would no longer pay for AD to commute back and forth, and AD would either need to pay for this themselves or find accommodation closer to their place of employment. The Landlords stated that they could not afford to pay their own mortgage as well as rent for AD in another city, and for AD to commute back and forth. As a result, the Landlords stated that they were forced to put the rental unit up for sale. The Landlords stated that they stayed with a family member after they vacated their own rental unit on April 27, 2022, and moved to their new accommodation closer to AD's place of employment on July 1, 2022. Although the Landlords agreed that they never fully moved into the rental unit, they stated that AB periodically stayed there while training with their soccer team.

Analysis

Although the Landlords stated that they issued the Two Month Notice in good faith, that the Tenant did not dispute the Two Month Notice, and that the Tenant did not suffer a loss because of the Two Month Notice, I find these arguments irrelevant. Section 51(2) of the Act does not require that a Tenant suffer a loss, that a Two Month Notice be issued in bad faith, or that a tenant dispute the Two Month Notice to be entitled to compensation. As a result, I have not considered these arguments further.

The Landlords argued that there was a mutual agreement to end the tenancy. I disagree. Although a text message sent by the Landlords to the Tenant on March 18, 2022, states that the Landlords wish to enter into a mutual agreement to end the tenancy at their realtor's suggestion, as they may not "technically" use the rental unit for their own personal use for an extended period, there is no evidence that the Tenant agreed to such an arrangement. Further to this, the Landlords subsequently served the Two Month Notice on March 24, 2022. As a result, I am satisfied that the tenancy ended on May 31, 2022, because of the Two Month Notice, not a mutual agreement to end tenancy.

Although the Landlords initially stated that they were evicted from their own rental unit in another community as the owners of that rental unit wanted it for their own use, prompting them to serve their own Two Month Notice on the Tenant, this is not accurate. When questioned about their alleged eviction, they acknowledged that they were asked to move by the owners of their rental unit, and entered into a mutual agreement to vacate their rental unit. This is not the same as being served with a Two Month Notice. Instead, I find that the Landlords made a choice to end their tenancy by way of a mutual agreement with the owners of their rental unit, rather than being "forced out" of their rental unit as argued by them.

The Landlords acknowledged that although one of them periodically stayed in the rental unit beginning May 31, 2022, they never fully moved in, and put the house up for sale on June 3, 2022. The house subsequently sold on September 8, 2022, with a possession date of September 9, 2022. The Landlords argued that extenuating circumstances prevented them from occupying the rental unit due to a change in employment circumstances, however, no proof of this change from the employer was submitted for my review and consideration, and I do not find the Landlords' testimony on its own sufficient to satisfy me that this was the case. Further to this, I find the text message dated March 18, 2022, wherein the Landlords attempted to have the Tenant

mutually agree to end their tenancy demonstrates that the Landlords knew, even before the Two Month Notice was served, that they were not going to occupy the rental unit as required.

Based on the above, I am satisfied on a balance of probabilities that the Landlords failed to occupy the rental unit within a reasonable period after the effective date of the Two Month Notice, May 31, 2022, and to occupy it for at least six months duration thereafter. I also find that the Landlords have failed to satisfy me that extenuating circumstances prevented them from doing so. As a result, I therefore grant the Tenant's Application seeking \$25,200.00, which represents 12 times the rent amount of \$2,100.00, pursuant to section 51(2) of the Act. As the Tenant was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Conclusion

I grant the Tenant's Application. Pursuant to section 67 of the Act, I grant the Tenant a monetary order in the amount of **\$25,300.00** and I order the Landlords to pay this amount to the Tenant. The Tenant is provided with this order in the above terms and the Landlords must be served with this order as soon as possible. Should the Landlords fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court 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 Act.

Dated: June 3, 2023

Residential Tenancy Branch