



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

The tenant applicant seeks \$36,000.00 in compensation against the landlord pursuant to sections 51(2) and 72(1) of the Residential Tenancy Act (the “Act”).

The tenant also seeks compensation for reimbursement of the filing fee in the amount of \$100.00.

The tenant attended and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The landlord did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 48 minutes to allow the landlord the opportunity to call.

The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord was provided.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or

dismiss the application with or without leave to reapply.

The hearing continued. The tenant provided uncontradicted evidence as the landlord did not attend.

Preliminary Issue – Service

The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on October 1, 2022, and deemed received by the landlord under section 90 of the *Act* five days later, that is, October 6, 2022

The tenant provided the Canada Post Tracking Number which is referenced on the first page.

The tenant submitted as evidence a copy of the tenancy agreement which provided the address for service of the landlord. The tenant testified she sent the registered mail to that address.

Pursuant to the landlord's credible and supported evidence and sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on October 6, 2022

Issue(s) to be Decided

Is the applicant entitled to compensation and reimbursement of the filing fee?

Background and Evidence

Relevant evidence, complying with the Rules of Procedure, was carefully considered in reaching this decision. Only admissible oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The Tenancy

The tenancy began on July 15, 2021, and ended on July 14, 2022. The tenant paid \$3,000.00 in monthly rent. The tenant submitted a copy of the tenancy agreement and explained the stated rent of \$3,800.00 was reduced after the basement flooded.

Two Month Notice

The landlord served a *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") on the tenant. A copy of the Notice was submitted which is in the standard RTB form.

The Notice was dated April 30, 2022, and effective July 14, 2022. The tenant moved out July 14, 2022.

The tenant testified that, as stated on page two of the Notice, it was her understanding that the tenancy was being ended so that the landlord or landlord's spouse could occupy the unit.

The Notice stated in part:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

☒ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

☐ The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

☐ All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

☐ The tenant no longer qualifies for the subsidized rental unit.

Tenant's Evidence of Occupancy

The tenant stated that two people who are not the landlord moved into the house shortly after she moved out.

The tenant went back to the property every week or so after she moved out to pick up her mail. She saw workers in the unit doing repairs.

The tenant kept contact with a neighbour SD after she moved out. SD sent her a text on August 25, 2022, saying that no one had moved into the unit and the landlord was removing items from the house.

Until September 1, 2022, the tenant went to the unit regularly. Each time she observed that no one had moved in. The tenant testified the unit appeared unoccupied.

On October 17, 2022, the tenant saw an online ad with pictures for the unit for rent of \$4,000.00 monthly, a copy of which was submitted as evidence.

Later, SD notified the tenant that the landlord had never moved in and people who were not the landlord had occupied the unit since March 2023.

Based on this evidence, the tenant testified she believes the landlord never moved into the unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find the tenant has met the burden of proof of the claim.

1. *Claim for compensation under section 51(2) of the Act*

Section 51(2) of the Act says the landlord must pay to the tenant 12 times the monthly rent if the landlord does not establish that they moved into the unit a reasonable time after the tenant moved out and lived there for at least 6 months.

The landlord was served with notice for this hearing and has failed to attend.

Based on the tenant's credible evidence, it is my finding that the tenant has established that it is more likely than not that the facts occurred as claimed.

So, the stated purpose for ending the tenancy was not accomplished within a reasonable period after the tenant moved out.

I find the unit was vacant for repairs and then occupied by someone other than the landlord.

I find it probable that the landlord did not move into the unit at all and certainly not within a reasonable time after the tenant moved out.

An Arbitrator may excuse a landlord under section 52(3) from paying the tenant under this claim if there were extenuating circumstances. However, there is no evidence from the landlord to establish any reason whatsoever for their failure to occupy the unit.

I agree with the tenant's reasonable conclusions in all aspects. I find the tenant has met the burden of proof for a successful claim under section 51.

Thus, pursuant to section 51(2) of the Act, the respondent landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement which in this case I determine is \$36,000.00.

2. Award – Filing fee

As the tenant has been successful in her claim, she is entitled to an award of \$100.00 for reimbursement of the filing fee.

3. *Summary*

The tenant is granted a Monetary Order in the amount of \$36,100.00 against the landlord.

Conclusion

For the reasons set out above the application is hereby granted.

I issue a Monetary Order of \$36,100.00 to the tenant.

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: June 15, 2023

Residential Tenancy Branch