



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 filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing, and the landlord was represented by an agent, LM. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an affirmation to tell the truth and they both confirmed that they were not recording the hearing.

As both parties were present, service was confirmed. The parties each confirmed receipt of the application and evidence. Based on the testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

Preliminary Issue

The tenancy agreement lists a single landlord and a single tenant. In the tenant's application for dispute resolution, there are two landlords and two tenants named. As the other people did not sign the tenancy agreement, they are not parties to it and therefore have no rights or responsibilities under the Act. I exercised my discretion to remove the second named applicant and respondent in the tenant's application for dispute resolution in accordance with section 64(3)(c) of the Act. The correct names of the landlord and tenant appear on the cover page of this decision.

Issue(s) to be Decided

Is the tenant entitled to compensation related to a notice to end tenancy for Landlord's use of property pursuant to section 51?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant testified that he had been living in the unit under the tenancy agreement with the landlord for the past 19 years. When the landlord got a new property manager, the property manager served him with a 2 Month Notice to End Tenancy for Landlord's Use on August 21, 2022. The effective date for the notice was November 30, 2022 and the reason for ending the tenancy was for the landlord's child to occupy the rental unit. The tenant couldn't move by November 30th and sought a different date of February 1, 2023 for the tenancy to end.

Some time after being served with the landlord's notice to end tenancy, the parties entered into a mutual agreement to end tenancy using the form #RTB-8. Together with this form, the parties entered into a mutual agreement where the tenant would receive 3 months compensation from the landlord and be given \$800.00 for mover's fees. The tenant testified the landlord didn't collect rent for the last 3 months of the tenancy and gave \$500.00 for mover's fees, since the tenant left behind waste and told the landlord the remaining \$300.00 could be used for waste removal.

The tenant testified that he remained friends with the neighbourhood and neighbours told him the landlord's daughter never moved into the rental unit as stated in the landlord's notice to end tenancy. The tenant did not call any of the neighbours or provide written statements from them.

The landlord's agent submits that the mutual agreement signed by the parties clearly absolves the landlord from providing further compensation to the tenant. It states, "*This is a full and final payout of funds to complete the agreement. There will be no further compensation*".

The landlord's agent called the landlord's daughter who testified that she moved in on March 1, 2023 and signed a tenancy agreement with the landlord, her father and mother. Named as co-tenants in the tenancy agreement are a married couple who each testified that they resided in the rental unit with the tenant's daughter as of March 1, 2023.

The tenancy agreement signed by the landlord, his daughter (as tenant) and the married couple was provided as evidence. The landlord's agent submits that there are two first pages and two signature pages because the form doesn't allow room for 3 tenants. All 3 signed the tenancy agreement and lived together as co-tenants to the landlord.

The intention was for the landlord's daughter to continue living in the rental unit with the married couple and her fiancé once they got married. Unfortunately, the fiancé's brother died and the daughter moved to be closer to the husband's family at the beginning of November, after marrying her fiancé. Currently, only the married couple remain living in the rental unit with their children, but the landlord's daughter lived there from March 1, 2022 to November 1, 2022.

Analysis

The tenant seeks compensation under section 51(2), as compensation for receiving a notice to end tenancy under section 49 for landlord's use of property. For the reasons below, I find the tenant is not entitled to the compensation.

First, I find that the tenancy did not end under section 49 [landlord's notice: landlord's use of property], but under section 44(1)(c), by mutual written agreement to end the tenancy.

Section 44 describes how a tenancy ends:

How a tenancy ends

44 (1)A tenancy ends only if one or more of the following applies:

(a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i)section 45 [*tenant's notice*];
- (i.1)section 45.1 [*tenant's notice: family violence or long-term care*];
- (ii)section 46 [*landlord's notice: non-payment of rent*];
- (iii)section 47 [*landlord's notice: cause*];
- (iv)section 48 [*landlord's notice: end of employment*];
- (v)section 49 [*landlord's notice: landlord's use of property*];**
- (vi)section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii)section 50 [*tenant may end tenancy early*];
- (b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c)the landlord and tenant agree in writing to end the tenancy;**
- (d)the tenant vacates or abandons the rental unit;
- (e)the tenancy agreement is frustrated;
- (f)the director orders that the tenancy is ended;
- (g)the tenancy agreement is a sublease agreement.

Although the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use, the parties entered into a subsequent mutual agreement to end the tenancy. The evidence shows that the landlord gave 3 months compensation instead of the single month as required under the Act and gave additional compensation in the form of mover's fees. The tenant signed the agreement acknowledging there would be no further compensation to the tenant.

In addition, the tenancy didn't end on November 30th, 2022, the effective date shown on the notice to end tenancy, but on January 31st, 2023, the date shown on the form #RTB-8 mutual agreement to end tenancy. This gives further credence to the finding that the tenancy ended pursuant to section 44(1)(c) and not section 44(1)(a)(v).

When a mutual agreement to end tenancy is signed after a tenant is given a notice to end tenancy, any future compensation related to the notice to end tenancy is forsaken.

At the top of the #RTB-8 Mutual Agreement to End a Tenancy form appears the following statement:

*NOTE: This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). **If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy.** If you have questions about tenant or landlord rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.*

(Emphasis in bold added)

The tenant was under no obligation to sign the mutual agreement but chose to do so after having the opportunity to understand the implications of signing it. He obtained the benefit of additional 3 months staying in the unit at no charge and was given \$500.00 moving fees. I find the tenant considered those benefits suitable and waived his right to seek future compensation from the landlord.

Based on the evidence before me, I find the tenancy ended in accordance with section 44(1)(c), when the landlord and tenant agreed in writing to end the tenancy. As this tenancy ended pursuant to 44(1)(c), by mutual written agreement and not in accordance with section 44(1)(a)(v) with a landlord's notice: landlord's use of property; the tenant is not entitled to compensation.

Lastly, I will address whether the landlord accomplished the stated reason for ending the tenancy. I find the landlord has discharged his onus to prove to me the daughter occupied the rental unit for a period of 6 or more months commencing from a reasonable period after the tenancy ended. I find the landlord's daughter and her two roommates to be credible witnesses who provided consistent testimony attesting to the fact that she resided in the unit from March 1 to November 1, 2022 (8 months). It is reasonable for the daughter to have roommates occupy a 3 bedroom, 2.5 bath alongside her and help pay the rent to her landlord/parents. Further, I find it reasonable for the engaged daughter to not spend each night in the rental unit so that she may spend time with her fiancé.

For the reasons set out above, I find the tenant's application seeking compensation under section 51 has not been successful. I dismiss the application without leave to reapply.

As the applicant was unsuccessful, the filing fee will not be recovered.

Conclusion

The application 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: June 09, 2023

Residential Tenancy Branch