



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNECT, FF

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for:

- compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice); and
- to recover the cost of the filing fee.

The tenant attended the hearing and was affirmed. The landlord did not attend the hearing.

The tenant stated they served the landlord with their application and Notice of Hearing by registered mail on or about October 21, 2022. The tenant filed the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

I accept the tenant's evidence and find that the landlord was served the tenant's application and notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) however, I refer to only the relevant evidence regarding the facts and issues in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord pursuant to section 51 (1) and (2) of the Act, other costs, and to recover the cost of the filing fee?

Background and Evidence

The tenant said that they did not have a copy of the written tenancy agreement and did not remember when the tenancy began. The tenant approximated that the tenancy began in February 2020 and the monthly rent throughout the tenancy was \$1,500.

In addition to the filing fee, the tenant's monetary claim is explained as follows:

Compensation of rent equal to 12 months (\$18, 000) plus equivalent of 1 month of rent (\$1500), as well as utilities (\$33.70) which is outlined in the rental agreement. Repayment rent June 15 – July 15 2022 (last month of rent) as outlined in the two month notice to ending tenancy RTB-32 for landlord's use of property. plus 12 months rent for failing to use property for Landlord's use as per the end of tenancy notice According to the Residential Tenancy Act, s.49 or s.49.1

[Reproduced as written]

The tenant claims that the rental unit has not been used for the stated purpose by the landlord listed on the Notice.

In support of this claim, the tenant testified that they received the Notice from their landlord, listing an end of tenancy date of July 15, 2022. The tenant submitted a copy of the Notice, which was dated May 15, 2022, and signed by their landlord. As a reason for ending the tenancy, the landlord listed that the landlord or the landlord's spouse will occupy the rental unit.

The tenant said they moved out of the rental unit on July 15, 2022, pursuant to the Notice, the effective date of the 2 Month Notice.

The tenant submitted that their rental unit was in the upper portion of the residential property, and the landlord rented the lower portion of the property to another tenant.

After the tenant vacated the rental unit, the tenant living in the lower portion of the residential property moved upstairs and began renting the entire home. The tenant said the landlord offered him the opportunity to rent the entire home a few months before being issued the 2 Month Notice. According to the tenant, they declined, as they only wanted to keep renting the upper part of the home.

The tenant submitted that the landlord confirmed in text messages that they did not move in and the lower tenant assumed renting the entire property, and renting out the lower portion themselves. The tenant submitted the text message communication.

The tenant also submitted photos of the lower tenant coming from the main entrance to the home which led to the upper unit.

The tenant also said the landlord failed to provide the one month's compensation they were entitled to for having received the 2 Month Notice. The tenant said they had asked the landlord about this compensation, but the landlord refused. The tenant said they paid the monthly rent until the tenancy ended.

In addition, the tenant claims they were to pay 80% of the monthly utilities, but they paid more than they owed, for which the landlord should be responsible.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

As the landlord failed to attend the hearing, I find the tenant's application is unopposed.

The 2 Month Notice was given to the tenant listing that the landlord or landlord's spouse will occupy the rental unit.

Under section 51(1) of the Act, a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or

before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The undisputed evidence is that the tenant received a 2 Month Notice from the landlord, for an effective date of July 15, 2022. The tenant testified that they paid the monthly rent up until the day they vacated.

For this reason, I find the tenant submitted sufficient evidence to support their monetary claim of \$1,500, the equivalent of 1 month's rent. I therefore find the tenant has established a monetary claim of **\$1,500**.

Additionally, Section 51(2) provides that if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or if the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

I find the tenant submitted sufficient and undisputed evidence that another, separate tenant began renting the rental unit after the tenant vacated and that the landlord has never moved into the rental unit since the tenancy ended. I therefore find that the rental unit has not been used for the stated purpose and as a result, I find the landlord must pay the tenant the amount of \$18,000, the equivalent of 12 times the monthly rent of \$1,500. I therefore find the tenant has established a monetary claim of **\$18,000**.

As the landlord failed to attend the hearing, there was no issue raised of extenuating circumstances.

For the above reasons, I therefore find the tenant is entitled to monetary compensation equivalent to 1 month's rent, as the landlord failed to pay the tenant this amount owed as a result of serving the tenant the 2 Month Notice, and 12 months rent as the rental unit was not used for the stated purpose listed on the 2 Month Notice.

As a result, I grant the tenant a monetary award of **\$19,500**, which is the monthly rent of \$1,500 and the equivalent of the monthly rent of \$1,500 for 12 months.

As to the tenant's claim for utilities of \$33.70, I find the tenant submitted insufficient evidence to support this claim. The tenant failed to provide a copy of the written tenancy agreement or proof of the payment in this amount. I therefore dismiss the tenant's claim for \$33.70.

I find merit with the tenant's application and award them recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

As a result of the above, **I grant the tenant a monetary order of \$19,600** as noted above.

Should the landlord fail to pay the tenant this amount without delay, the tenant may serve the order on the landlord for enforcement purposes. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation and recovery of the filing fee is granted in the above terms.

The tenant has been granted a monetary order for \$19,600.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 04, 2023

Residential Tenancy Branch