



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Franklin and Triumph Joint Venture and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenant (hereinafter the “Tenant”) filed an Application for Dispute Resolution on December 11, 2022. They are seeking compensation related to the Landlord ending the tenancy, and the Application filing fee.

The matter proceeded by hearing on September 11, 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.

Preliminary Matter – Tenant’s evidence for this hearing

At the outset, the Landlord confirmed they received the evidence the Tenant provided with the copy of the Notice of Dispute Resolution Proceeding they sent to the Landlord in December 2022. Though the Tenant provided evidence to the Residential Tenancy Branch later in the interim period prior to the September 2023 hearing, they did not provide this evidence to the Landlord; for this reason, I cannot consider this evidence because it was not disclosed to the Landlord.

The Tenant at the outset of the hearing stated they received evidence provided to them by the Landlord.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the landlord ending the tenancy, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to recover the filing fee for the tenant’s Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The tenancy agreement in the evidence shows the tenancy started in 2018. The amount of rent as of the end of this tenancy was \$1,794 as shown in the rent increase notice both parties provided as evidence. This amount is the basis for the Tenant's claim for compensation based on a monthly rent amount.

The tenancy ended on February 28, 2022. The Landlord issued a Four Months' Notice to End Tenancy for Demolition or Conversion of a Rental Unit (the "Four-Month Notice") on January 25, 2022. The end-of-tenancy date specified on that document was June 1, 2022, this to "[c]onvert the rental unit for use by a caretaker, manager, or superintendent of the residential property."

The Tenant here applies for compensation on the basis that the Landlord did not use the rental unit for the stated purpose for the required amount of time. As stated on their Application to the Residential Tenancy Branch:

I believe the new buyers of the property acted in poor faith and evicted after their purchase to renovate and increase the rent. they said they would be using [the rental unit] as the property managers suite, when there were numerous other units in the building that were empty. the amount requested is 12 months of rent at 1773.00. I was forced to find a new place very quickly after living there for 6 years. Requesting evidence that [the Landlord] acted in good faith and did use [the rental unit] as said

The Tenant recalled feeling nervous about the pending sale of the rental unit property. The Landlord, who was then new, inspected the unit approximately one month after the sale and commented on the condition of the rental unit. The Tenant stated that 30 minutes after this inspection they received the Four-Month Notice. Their neighbour in the building also received an end-of-tenancy notice for a different reason.

After the Tenant moved out, they became aware of lots of renovations in the building. The Tenant described a promotional brochure for the building showing a picture of the rental unit as renovated. The Tenant described seeing, or knowing about, lots of other online articles that described the Landlord as a "renovictor".

Counter to this, the Landlord presented that they served the Four-Month Notice to the Tenant for the caretaker's use of that rental unit. Their need was based on their management of other buildings in the area, as well as the rental unit property, in order to focus on building upkeep by having a resident caretaker. The caretaker was a single father and so required the two-bedroom space that was the rental unit. This caretaker does not pay rent; therefore, there was no profit motive to the Landlord in using this

rental unit for this purpose. The Landlord did some upgrades to the rental unit in April 2022 prior to the caretaker's move into the rental unit

The Landlord the following records, some showing the caretaker living in the rental unit after the Tenant moved out, and some showing that the caretaker still lives there as of the hearing date:

- the tenancy agreement for the caretaker, showing a start-of-tenancy date of May 1, 2022, for "free" rent, jointly signed by the caretaker and the Landlord on April 25, 2022
- the caretaker's move-in inspection form completed on April 29, 2022 for the rental unit
- the employment contract for the caretaker, signed on April 1, 2022 (the Tenant drew attention to an apparent edit/alteration of that date on the document)
- a tax assessment for the tax year 2022 (the Tenant pointed to a discrepancy in the tax year involved)
- a utility invoice for July 25, 2023 showing the caretaker's name and the service address that is that of the rental unit
- a sheet showing payroll deductions for the caretaker, dated June 2023
- a welcome sheet, showing the appropriate building manager personnel, showing the caretaker as present
- an image of text messages from a building resident, in which the Landlord responded to that resident, directing them to the caretaker who resided in the rental unit address, dated August 25, 2023
- an August 28, 2023 message from another building resident referring to the caretaker's presence "seen walking around the building" as "helping", referring to the caretaker's unit address being that of the rental unit.

The Tenant responded to say that this does not constitute evidence that shows the caretaker resided in the rental unit for a consecutive six month period in 2022. The Tenant also questioned why the Landlord did not choose any other then-available unit in the building for the caretaker's use.

Analysis

In this matter, the onus of proof is on the Landlord to show that they accomplished the stated purpose for ending the tenancy. The Tenant on their Application asked for evidence of this from the Landlord.

Under s. 49(6) of the *Act* a landlord may end a tenancy if they intend in good faith to convert the rental unit for use by a caretaker. There is compensation awarded in certain circumstances where a landlord issued a Four-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 . . . 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.

On my review of this matter, I find the Landlord accomplished the stated purpose for ending the tenancy. The evidence shows they used the rental unit for the reason indicated, as of April 2022 onwards, for at least 6 months' duration. I give weight to the evidence provided by the Landlord, as well as their direct account in this hearing. The Tenant pointed to discrepancies in the Landlord's provided evidence; however, I find the abundance of evidence shows the caretaker moved into that rental unit and continues to occupy that space as of the hearing date.

The effective date of the Four-Month Notice was June 1, 2022, and the Tenant chose to move out from the rental unit earlier than that, on February 28, 2022. After this, the caretaker's own agreement commenced on May 1, 2022. Applying the *Act* as set out above, I find the caretaker's agreement commenced *prior to* the effective date of the Four-Month Notice.

I find the evidence shows the Landlord fulfilled both conditions of s. 51(2)(a) and (b) as required. This carries more weight than what was presented by the Tenant for this hearing. The Tenant had the right to dispute the validity of the Four-Month Notice, and that was the opportunity to raise questions as to the Landlord's good faith in seeking to end the tenancy. That is not a proper consideration at this stage after the tenancy has ended and there is no other opportunity to challenge the Landlord's good faith requirement.

I find the Landlord has offset the burden of proof. That is to say, the Landlord's evidence is stronger in showing they used the rental unit for the stated purpose. I conclude that s. 51(2) does not apply in this situation, and there is no monetary award to the Tenant here. I dismiss the Tenant's claim, without leave to reapply.

Because they were not successful in this claim, I find the Tenant is not entitled to recover the \$100 filing fee.

Conclusion

I dismiss the Tenant's Application, without leave to reapply.

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: September 13, 2023

Residential Tenancy Branch