



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenant (hereinafter the “Tenant”) filed an Application for Dispute Resolution on March 9, 2023. They are seeking compensation related to the Landlord ending the tenancy, and reimbursement of the Application filing fee.

The matter proceeded by hearing on September 1, 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. Each party confirmed they received the documentary evidence of the other in advance.

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 this application pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided copies of pages from the tenancy agreement document. They each confirmed that the tenancy began on January 5, 2019, with the Tenant paying \$1,600 for rent each month, an amount that did not increase over the course of the tenancy.

The Landlord issued the Two-Month Notice for Landlord's Use of Property (the "Two-Month Notice") on March 3, 2022. This was for the move-out date of May 31, 2022. On page 2 of the Two-Month Notice, the Landlord indicated "The child of the landlord or the landlord's spouse" would occupy the rental unit.

The Tenant moved out from the rental unit on May 31, 2023. This was after the Tenant made this Application.

The Landlord presented a series of written statements:

- dated Aug 2, 2023: their child "has been residing in the property since [the Tenant] moved out".
- dated July 30, the current basement unit residents at the rental unit property confirmed that the Landlord's child resides in the upper floor of the home [*i.e.*, the rental unit].
- dated July 31, the neighbour of the rental unit property confirms that the Landlord's son lives in the upper level of the rental unit property – they see and interact with the Landlord's child on "regularly when we are outside."
- dated July 31, 2023, the Landlord's child's roommate – a nephew of the Landlord – lived with the Landlord's child since July 2022.

The Tenant presented that they left from the rental unit on May 31, 2023. They have not seen one vehicle belong to the Landlord's family members at the rental unit property, despite their many visits and drives past the rental unit home, up to four times per day. Further, their former neighbours watch the rental unit property for cars, and one neighbour confirms they have not seen one single car purportedly belonging to the Landlord's child.

In response to this, the Landlord stated there are many shared vehicles in the family, and the Landlord's child has no vehicles under their own name. No vehicles are parked at the Tenant's former rental unit.

The Tenant also described retrieving their own mail that was still addressed to their former rental unit mailbox. There is "no trace of mail" belonging to the Landlord's child. When the Tenant visited to inquire, in October 2022, another family member answered the door and "laughed" when the Tenant asked about the Landlord's child.

The Landlord responded to say the Landlord's child "probably removes mail". There "probably aren't many bills and "probably [such information] does to the Landlord's other home."

More generally, the Landlord questioned the Tenant's ability to make the determination that the Landlord's child was not occupying the rental unit at all. They posited that the neighbours just did not happen to see the Landlord's child, who works 12 hours shifts.

The Tenant described viewing their former rental unit from the outside, with nothing in there, being able to see in the living room and kitchen. To this, the Landlord responded that there is the bare minimum of contents inside the home, with the Landlord's child "still getting it together."

The Tenant applied for 12 months of their monthly rent amount, being the amount owed where the Landlord did not accomplish the stated purpose for ending the tenancy within a reasonable period after the end-of-tenancy date. This is \$19,200.

Analysis

Under s. 49(5) of the *Act* a landlord may end a tenancy if a purchaser asks the landlord in writing to end the tenancy, in good faith, for their own occupancy of the rental unit.

A Tenant's compensation in these circumstances is governed by s. 51 which provides:

- (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 or purchaser, as applicable, 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 the tenant the amount required under subsection (2) 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.

The burden of proof in this matter is with the Landlord, to prove on a balance of probabilities that they accomplished the stated purpose for ending the tenancy both within a reasonable period, and for at least 6 months' duration.

I find the Landlord has not established that the rental unit was used for that stated purpose both within a reasonable time after the tenancy ended, and for at least 6 months. The Landlord presented minimal written statements, with no other proof in the form of photos showing the rental unit being lived in, established utilities in the Landlord's child's own name, or other information. The written statements they provided are unsubstantiated with evidence.

Neither the Landlord, nor the Landlord's child who allegedly lives in the rental unit, attended the hearing to speak directly to the matter, and instead they relied on another family to attend. There was no explanation on why the Landlord's child did not attend the hearing to explain the situation directly. The Landlord's other family member who attended merely provided arguments to what the Tenant presented, without actual proof.

In summary, the Landlord did not provide sufficient evidence to overcome the onus of proof in this matter. I find what the Tenant described, in abundant detail, outweighs what the Landlord provided here. I find the Landlord did not present tangible proof that their child was living in the rental unit, and a few signed statements do not enable the Landlord to overcome the burden of proof in this matter. In contrast, the Tenant provided photos that they explained in detail, their regular observations based on their frequent viewings of the rental unit property, and the lack of response from the Landlord about the issue after the tenancy ended. While the matter of getting sound information directly from the Landlord in this type of situation is an onerous task, necessarily involving visits to the property and even inquiries to others who live there, the Landlord merely responded in the negative to what the Tenant presented and did not otherwise prove they do in fact reside at the rental unit property.

The Landlord otherwise made no statements of extenuating circumstances; therefore, I find that separate consideration does not apply to the present situation.

For these reasons, I find the Tenant is entitled to compensation. I grant the Tenant compensation in the amount specified by s. 51(2), the equivalent of twelve times the amount of the monthly rent of \$1,600. This is \$19,200.

The Tenant was successful in this Application; therefore, I grant reimbursement of the Application filing fee.

Conclusion

Pursuant to s. 51, I grant the Tenant a Monetary Order in the amount of \$19,300. I provide the Tenant with this Monetary Order in the above terms, and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file the Order in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: September 4, 2023

Residential Tenancy Branch