



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with a tenant's application for compensation payable where a landlord does not use the rental unit for the purpose stated on a *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice").

Both the landlord and the tenant appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I explained the hearing process and gave the parties the opportunity to ask questions about the process.

I confirmed the parties had exchanged their respective hearing materials upon each other and I admitted them into evidence for consideration in making this decision.

Issue(s) to be Decided

Is the tenant entitled to compensation equivalent to 12 months of rent under section 51(2) of the Act?

Background and Evidence

The tenant had been living in the rental unit since September 2019 under a tenancy agreement with the former owner and the rent payable to the former owner was \$1100.00 per month. The current landlord purchased the property in 2020 and sought to increase the monthly rent. As evidenced in an email, the parties agreed the tenant would start paying rent of \$1350.00 to the landlord on October 1, 2020.

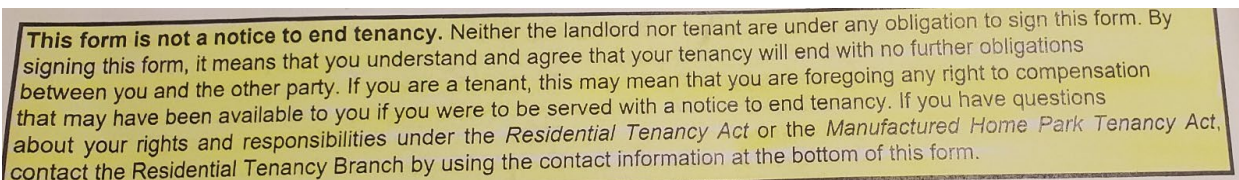
On November 12, 2020 the tenant sent a text message to the landlord that she had contacted the Residential Tenancy Branch and determined the increase in rent was non-compliant. The tenant proposed to reduce the December 2020 rent payment to \$600.00 to recover the rent increase the landlord collected for October 2020 and November 2020. The landlord responded, via text message, indicating the reduced rent payment for December 2020 was acceptable and that the landlord would be serving the tenant with a 2 Month Notice and the landlords needed more space for their two teenaged sons.

On November 12, 2020 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") with a stated effective date of January 31, 2021. The reason for ending the tenancy, as indicated on the 2 Month Notice is so that the landlord or landlord's close family member, may occupy the rental unit.

The parties provided consistent testimony that the tenant withheld rent for January 2021 as the compensation the tenant was entitled to for receiving the 2 Month Notice.

The tenant moved out of the rental unit on January 28, 2021 and on January 29, 2021 the parties met at the property for purposes of conducting the move-out inspection and returning possession of the rental unit to the landlord. During that meeting, the landlord presented the tenant with a Mutual Agreement to End a Tenancy ("Mutual Agreement") for signature, indicating the tenancy was ending effective January 29, 2021. There is a hand-written notation at the bottom of the document indicating the security deposit was refunded. Both parties signed the document.

The landlord argued that in signing the Mutual Agreement the tenant agreed there were no further obligations to each other, including compensation. The landlord pointed to the top portion of the Mutual Agreement document in support of her position. The portion the landlord pointed to provides as follows:



This form is not a notice to end tenancy. Neither the landlord nor tenant are under any obligation to sign this form. By signing this form, it means that you understand and agree that your tenancy will end with no further obligations between you and the other party. If you are a tenant, this may mean that you are foregoing any right to compensation that may have been available to you if you were to be served with a notice to end tenancy. If you have questions about your rights and responsibilities under the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*, contact the Residential Tenancy Branch by using the contact information at the bottom of this form.

The landlord submitted that in presenting the Mutual Agreement to the tenant the landlord explained to the tenant that she sought the tenant's signature in recognition

that the tenant had moved out a couple of days early and so that the landlord was free to start using the rental unit as she wanted for the remainder of January 2021. The tenant stated there was no such conversation when the landlord presented her with the Mutual Agreement. The tenant submitted that the landlord just presented the documents to her and told her where to sign. The tenant believed that signing the Mutual Agreement was part of the process for recognizing the end of the tenancy and so that she received the security deposit refund.

Shortly after the tenancy ended, the tenant saw online advertisements the landlord placed advertising the rental unit as available for short term rental at the rate of \$2000.00 per month and available for a monthly lease up to the month of May 2021. The tenant found further advertisements on a popular short term vacation rental website in April 2021 showing the unit available for the nightly rate of \$150.00 per night. The tenant provided copies of advertisements she found online.

The tenant submitted that the landlord has not been using the rental unit for the landlord's use or that of a close family member as the landlord indicated on the 2 Month Notice. The tenant seeks compensation equivalent to 12 months of rent at the rental rate of \$1100.00 per month, or \$13,200.00.

The landlord acknowledged that she had posted the unit for rent shortly after the tenancy ended but the landlord stated she "took the ads down". The landlord acknowledged that starting in April 2021 she began advertising the rental unit for short term rentals and that she has been using the rental unit for short term rentals most weekends since April 2021 at the rate of \$120 - \$140.00 per night. The landlord stated that she used the rental unit to accommodate her in-laws for approximately two weeks after the tenancy ended. The landlord testified that her children use the space in the rental unit when it is not rented to guests. The landlord provided photographs of her children in the rental unit.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Where a tenant receives a *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") under section 49 of the Act, the tenant is entitled to compensation as provided under section 51 of the Act.

It is undisputed that the tenant was served with a 2 Month Notice in November 2020 to be effective January 31, 2021. It is also undisputed that the tenant withheld rent for January 2021 as compensation for receiving the 2 Month Notice.

The landlord argued that in signing a Mutual Agreement to End a Tenancy on January 29, 2021 the parties had no further obligations to each other, including compensation. The Mutual Agreement form provides for cautionary statements that a Mutual Agreement is not a Notice to End Tenancy and in signing the Mutual Agreement the tenant may not be entitled to compensation that is payable had the tenancy ended with a Notice to End Tenancy. I find the cautionary statements at the top of the Mutual Agreement are intended to make it clear, especially to tenants, that ending the tenancy by way of a mutual agreement does not convey the same rights that may be obtained by way of receiving a Notice to End Tenancy. However, I find this case is distinct in that the tenant did receive a Notice to End Tenancy and the tenant relied upon and acted upon the 2 Month Notice by withholding rent for January 2021, securing new living accommodation and moving out by January 31, 2020.

There is no indication on the Mutual Agreement or any other document that indicates the 2 Month Notice was withdrawn by the parties and replaced by the Mutual Agreement by agreement of both parties. Nor, did I hear any evidence that there was an oral agreement the 2 Month Notice was withdrawn by mutual consent.

While the landlord submitted that her intention to having the tenant sign the Mutual Agreement was so that she had the freedom to do as she wished with the unit for the few remaining days in January 2021, I am satisfied this claim is not related to the last few days remaining in January 2021. Rather, the evidence put forth by the tenant is that the landlord re-rented the unit on or after February 1, 2021.

In light of the above, I find tenancy ended pursuant to a 2 Month Notice and the tenant is entitled to the compensation provisions of section 51 of the Act despite signing a Mutual Agreement to End Tenancy on the last day of tenancy.

Section 51 of the Act provides for compensation payable to a tenant where the tenancy has ended under section 49 of the Act. In this case, the tenant received compensation under section 51(1) of the Act by way of withholding rent for January 2021. By way of this application, the tenant is seeking the additional compensation payable under section 51(2) of the Act.

Below, I have reproduced section 51(2) of the Act:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) 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

(b) 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.

Subsection (3) provides for mechanism to excuse the landlord from having to pay the compensation provided under section 51(2) due to "extenuating circumstances". Below, I have produced subsection (3):

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(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 tenant put forth evidence that the landlord used the rental unit to rent out on a short term monthly basis and for nightly stays by way of online advertisements. The landlord acknowledged that she offered the rental unit for a monthly lease by way of an advertisement posted shortly after the tenancy ended but the landlord claims to have "taken the ad down". The advertisement provided by the tenant as evidence shows the unit as being no longer available for rent as it was "rented" and "sold". I find the landlord's statement that she took the ad down is unclear as to whether she rented the unit for short term monthly leases before advertising the unit for rent on a nightly basis. In any event, the landlord admitted the rental unit was rented out as short term vacation

accommodation most weekends starting in April 2021. In addition to renting the unit out for short term stays, the landlord submitted that her in-laws stayed in the unit for two weeks and her children enjoy use of the rental unit when the unit is not rented.

The Act provides very specific and limited circumstances when a landlord may end a tenancy. The Act also provides very serious consequences where a landlord ends a tenancy by stating one reason and then not fulfilling the stated reason, where a tenancy is ended for landlord's use by way of a 2 Month Notice or a 4 Month Notice in form of having to pay the tenant additional compensation. The requirement to pay the tenant additional compensation is intended to be a deterrent to ending a tenancy under false pretenses and in many cases, it provides an offset to the tenant often having to pay higher rent elsewhere. The spirit of the Act is to preserve existing tenancies except in limited and specific circumstances.

Where a landlord ends a tenancy to endeavour on a short term rental business, that constitutes a change of use from long term rental to short term vacation accommodation more in line with a hotel business model. Where a landlord has all the necessary permits and approvals in place to change the use to a short term vacation accommodation business the appropriate manner to end the tenancy is with a *Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion of the Rental Unit to Another Use*.

In this case, I find the landlord started using the rental unit as a short term vacation accommodation business starting no later than April 2021, which is within six months of the tenancy ending, and that is the not the reason for ending the tenancy on the 2 Month Notice served upon the tenant. As for the landlord's submission that her in-laws had used the rental unit for two weeks and her sons use the rental unit in between the weekend rentals, I find their use is subordinate to the landlord's objective to generate income by way of short term rentals. Therefore, I find the landlord has not used the rental unit for the stated purpose for at least six months after the tenancy ended and I find the tenant entitled to the additional compensation provided under section 51(2) of the Act, as requested, in the amount of \$13200.00 [\$1100.00 x 12 months].

The landlord did not present any evidence to suggest an "extenuating circumstance" prevented the landlord from fulfilling the stated purpose on the 2 Month Notice and I do not consider excusing the landlord from paying the additional compensation.

Given the tenant's success in this application, I further award the tenant recovery of the \$100.00 filing fee paid for this application.

In light of all of the above, the tenant is provided a Monetary Order in the sum of \$13300.00 to serve and enforce upon the landlord.

Conclusion

The tenant was successful in this application and is provided a Monetary Order in the sum of \$13300.00 to serve and enforce upon the landlord.

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 16, 2021

Residential Tenancy Branch