Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the former Tenants (Tenants) on February 20, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on October 13, 2022, and was attended by the Tenants, the Landlord, the Landlord's advocate (the Advocate), a property manager for the Landlord (the Property Manager), and the Landlord's son D.S. All testimony provided was affirmed. The participants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The participants were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application, and the Notice of Hearing. Although the Landlord stated that the notice of dispute resolution proceeding (NODRP) package, which includes a copy of the

Application and the Notice of Hearing, was received far past the three-day deadline set out under the Act and the Rules of Procedure, ultimately, they acknowledged receipt on April 11, 2022, by registered mail, and stated that they were fine to proceed with the hearing is scheduled. As a result, I found that they were sufficiently served for the purposes of the Act and the Rules of Procedure on April 11, 2022, pursuant to section 71(2)(b) of the Act and the hearing proceeded as scheduled.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

The Rules of Procedure state that the parties must exchange the documentary evidence that they intend to rely on at the hearing, prior to the date and time of the hearing, and within the timeframes set out under the Rules of Procedure for Applicants and Respondents. Although the parties agreed that most of the documentary evidence before me had been properly exchanged, the Landlord denied receipt of two videos and one audio recording that the Tenants stated were sent to the Landlord by registered mail on September 10, 2022. The Tenants provided me with the registered mail tracking number, which I have recorded on the cover page of this decision, and during the hearing the Landlord tracked this registered mail using the Canada post tracking system. The Landlord stated that the tracking system shows that the registered mail is on hold in Winnipeg. With the consent of the parties, I tracked the registered mail myself which shows that it was sent on September 10, 2022, and that it was delivered to a mailroom in Winnipeg on September 13, 2022.

As the parties agreed at the hearing that the Landlord’s address for service is not in Winnipeg, the Tenants stated that they must have provided me with the incorrect registered mail tracking number. However, during the hearing the Tenants were not able to locate the correct registered mail tracking number. As a result, and as the Landlord denied receipt, I therefore excluded the two videos and one audio recording from consideration, as I was not satisfied that they were properly served on the Landlord in advance at the hearing and I therefore found that it would be administratively unfair and significantly prejudicial to the Landlord to accept them for consideration.

Issues to be Decided

Are the Tenants entitled to compensation from the Landlord under section 51(2) of the Act related to a Notice to End Tenancy for Landlord's Use of Property?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the Tenants were personally served with a Two Month Notice on June 29, 2020. A copy of the Two Month Notice was provided for my review and consideration. The Two Month Notice is on the 2020 version of the form, is signed and dated June 29, 2020, has an effective date of August 31, 2020, and states that the notice to end tenancy has been given because the rental unit will be occupied by the child of either the Landlord or the Landlord spouse. The parties agreed that the tenancy ended on July 31, 2020, because of the Two Month Notice, after the Tenants exercised their right to end the tenancy early pursuant to section 50(1) of the Act.

The Tenants stated that the Two Month Notice was served in bad faith and that the Landlord did not comply with the stated purpose for ending the tenancy set out in the Two Month Notice as they do not believe that the Landlord's son, D.S., moved into the rental unit within a reasonable period of time after the effective date of the Two Month Notice or that they occupied the rental unit for six months thereafter. As a result, the Tenants sought $14,000.00 pursuant to section 51(2) of the Act, as well as recovery of the $100.00 filing fee.

The Landlord stated that the Tenants are not entitled to any compensation as their son D.S. moved into the rental unit within eight days of the Tenants vacating, and resided there for a continuous period of approximately 19 months. The Landlord's son D.S. appeared at the hearing and stated that they moved into the rental unit on August 7, 2020, and occupied the rental unit continuously until the beginning of March 2022.

The Advocate stated that it is clear from the documentary evidence before me from the Landlord that the Landlord and their son complied with the stated purpose for ending the tenancy set out in the Two Month Notice and argued that the Tenants should therefore not be entitled to any compensation under section 51(2) of the Act. In support of this position the advocate pointed to documentary evidence before me on behalf of the Landlord including but not limited to:

- Letters from two building managers and two other occupants of the residential building in which the rental unit is located, confirming D.S.' occupancy of the rental unit between August 2020 – the end of February 2022;
- Photographs of the apartment building, the rental unit, and the view from the rental unit;
- A tenancy agreement for D.S. at a different address effective March 1, 2022;
- Internet bills in D.S.' name at the rental unit address with usage dates between September 1, 2020 – March 31, 2022;
- A moving estimate for March 2, 2022;
- Hydro bills in D.S.'s name at the rental unit address with usage dates starting in December of 2020;
- A moving quote for a move from a different address to the rental unit address for a move on August 7, 2020;
- A moving invoice in the amount of $630.78 dated August 7, 2020, from the same company as the above noted moving quote; and
- A one-page written submission from the Landlord;

The Tenants argued that there was a lack of good faith on the part of the Landlord with regards to service of the Two Month Notice. The Tenants questioned the testimony and submissions of the Landlord, the Advocate, and the Landlord's son D.S., that D.S. occupied the rental unit beginning in August of 2020. They argued that it makes no sense that D.S. began occupying the rental unit in August of 2020 as the hydro bills submitted show that an account was not even set up in D.S.'s name at the rental unit address until December of 2020. The Tenants also stated that they drove by the building in which the rental unit is located approximately three times a week and never observed any lights on in the rental unit until January of 2021. As a result, the Tenants stated that they do not believe that D.S. occupied the rental unit for residential purposes within a reasonable period of time after the effective date of the Two Month Notice and for at least six months duration thereafter.

In support of their position the Tenants submitted documentary evidence including but not limited to:

- A copy of the Two Month Notice;
- A one-page written submission including a timeline of events;
- A series of emails between the Tenant J.B. and agents for the Landlord regarding repair requests from the Tenants and a complaint about other occupants of the building smoking;

- A series of emails between the Tenant J.B. and agents for the Landlord with regards to the move out date and the possibility of a mutual agreement to end tenancy and additional compensation;
- Copies of text messages with regards to scheduling viewings of the rental unit for prospective new tenants;
- A notice to end tenancy that appears to be from occupants of a different rental unit in the building stating that those tenants intend to vacate their rental unit on August 3, 2020; and
- A copy of the tenancy agreement.

The Advocate stated that the Landlord's company paid the hydro bill for the rental unit for the first few months, which is why a hydro account was not set up in D.S.'s name at the rental unit until December of 2020. The Advocate pointed to the documentary evidence before me stating that it clearly shows that D.S. set up internet at the rental unit address in their own name in September of 2020, shortly after moving into the rental unit. The Advocate also pointed to the moving invoice and quote for August 7, 2022, which they stated clearly shows that D.S. moved into the rental unit on that date. Finally, the Advocate argued that just because lights were not on in the rental unit when the Tenants' happened to drive past, it does not mean that D.S. was not living in the rental unit at that time.

The Tenants reiterated their belief that the Two Month Notice had not been served in good faith, and argued that if the Landlord were paying for hydro at the rental unit for a period of time after D.S. moved in, it would have been easy for them to submit proof of this. They inferred that I should draw an adverse inference from the Landlord's failure to do so.

Analysis

Based on the documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the Act applies existed between the parties. I am also satisfied that the Tenants were served with a Two Month Notice pursuant to section 49(3) of the Act, and that the tenancy ended because of the Two Month Notice on July 31, 2020, after the Tenants exercised their right to end the tenancy early, pursuant to section 50(1) of the Act.

Section 51(2) of the Act states that 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 the landlord or purchaser, as applicable, does not establish that:

- the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- the rental unit, except in respect of the purpose specified in section 49 (6) (a), 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.

Although the Tenants called into question whether or not D.S. moved into the rental unit within a reasonable period of time after the effective date of the Two Month Notice and resided there for a period of at least six months thereafter, the Landlord and their agents submitted significant compelling documentary evidence and testimony that D.S., who is the Landlord's son, moved into the rental unit on August 7, 2022, and resided there continuously for a period of approximately 19 months. I do not find the Tenants' testimony that they drove past the rental unit numerous times and did not see lights on until January of 2021, or their argument that the lack of electricity bills in D.S.'s name for several months after the date D.S. stated that they moved into the rental unit sufficient to outweigh the significant and compelling documentary evidence and testimony before me from the Landlord, their agents, and D.S. Further to this, I find the Tenants' arguments to be largely, if not entirely, speculative in nature.

I accept the affirmed testimony of the Advocate that the reason there are no electricity bills in D.S.'s name for the first few months of the tenancy, is because the Landlord's company paid those bills in their own name. I am also satisfied by the written statements of two property managers and two other occupants of the residential property, as well as the moving quotes and invoices, the Internet bills in D.S.' name, and the tenancy agreement effective March 1, 2022, that the Landlord's son D.S. moved into the rental unit on August 7, 2020, and resided there until the end of February or the beginning of March of 2022. As a result, I find that the Landlord has satisfied me on a balance of probabilities that they complied with the stated reason for ending the tenancy set out on the Two Month Notice, by having their son occupy the rental unit within and for the required time periods.

Although the Tenants also argued that the Two Month Notice was not served in good faith, nothing in section 51 of the Act, which is the section under which the Tenants have sought compensation, speaks to the issue of good faith. In my opinion, the good faith requirement relates only to the matter of enforceability of a Two Month Notice under section 49 of the Act, when a tenant seeks to dispute the notice and continue the

tenancy. This interpretation is supported by Policy Guideline #2A. As this Application was not about enforceability of the Two Month Notice, and the parties agreed that the tenancy had in fact ended on July 31, 2020, because of the Two Month Notice, I therefore find that the matter of whether the Two Month Notice was served in good faith, has no bearing on the claim before me from the Tenants for compensation under section 51(2) of the Act. Further to this, I find the Tenants' position that the Two Month Notice was not issued in good faith contradictory to their claim for compensation under section 51(2) of the Act, because if I were to find that the Two Month Notice was not enforceable because it was not served in good faith, the Tenants would not be entitled to file a claim under section 51(2) of the Act, because the tenancy would not have ended as a result of a Two Month Notice, which is a requirement for compensation to be awarded under section 51(2) of the Act.

Based on the above, I therefore dismiss the Tenants' Application seeking compensation under section 51(2) of the Act without leave to reapply. As I have dismissed the Tenants' claim for compensation under section 51 of the Act, I declined to grant them recovery of the $100.00 filing fee.

Conclusion

The Tenants' Application is dismissed in its entirety without leave to reapply.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority render it, are affected by the fact that this decision was issued more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: November 16, 2022

Residential Tenancy Branch