



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing first convened by teleconference on November 14, 2022, to deal with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation from the respondent related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) and recovery of the cost of the filing fee.

The tenant, the respondent, and the respondent's interpreter attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed. The parties confirmed receiving the other's evidence.

The hearing continued for 67 minutes, at which time the hearing was adjourned due to the length of time as hearings are scheduled for 1 hour. An Interim Decision was issued on November 15, 2022, which is incorporated herein by reference and should be read in conjunction with this Decision.

At the reconvened hearing, the tenant, the respondent, the respondent's interpreter and their witness attended. The witness was excused until time for their testimony.

At both hearings, the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are

reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

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 a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act and recovery of the cost of the filing fee?

Background and Evidence

The tenant submitted that the tenancy started on August 15, 2015, for a beginning monthly rent of \$1,300, and ended on May 31, 2021, with the monthly rent being \$1,365 at the end of the tenancy. Filed in evidence was the written tenancy agreement.

The tenant's monetary claim is \$16,380, which is the equivalent of 12 times the monthly rent payable under the tenancy agreement, at \$1,365 per month.

The undisputed evidence is that the tenant's former landlord issued the tenant a 2 Month Notice for Landlord's Use of Property (Notice) at the request of the purchaser for vacant possession. Filed in evidence was a copy of the Notice.

The Notice was dated March 19, 2021, listing an effective move-out date of June 1, 2021, with the reason being that the "*conditions of sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit*". The tenant accepted the Notice as they vacated on May 31, 2021.

In response to the tenant's claim, the respondent/purchaser proceeded first in the hearing.

The respondent, through their interpreter, said that the respondent's daughter, the witness for the hearing, moved into the rental unit, described by the respondent as an "independent suite", which was the reason the 2 Month Notice was given. Later on,

their father suffered a fall on June 13, 2021, and a second fall on July 31, 2021. The father then asked his other daughter who was to occupy the rental unit, if they could move into the main part of the home to take care of their father. The respondent said they cannot independently look after their husband.

According to the respondent, the whole family moved into the residential property after renovations, on August 20, 2021, and the respondent's daughter moved in on August 24, 2021. The respondent submitted her husband still suffers with mobility issues.

The witness, the respondent's daughter, stated that they asked her mother if they could live in the rental unit when the home was purchased. The witness stated their father had a fall in the park on June 13, 2021, but did not go to the hospital at that time because of Covid. Their father's fall caused them to have to move into the main home, according to the witness.

Evidence filed by the respondent included medical records regarding her husband from July 31, 2021, evidence of repairs and renovations, including a contract and receipts, and utility bills.

Tenant's response

The tenant wrote in their application the following:

I was presented with the Two Month Notice to End Tenancy for Landlord's use of Property form. The form indicated the purchaser's intention was to have a close family member occupy the suite. Within 3 weeks of the purchaser's possession date, an advertisement appeared on Craigslist offering my former suite for rent with an immediate availability. I am seeking additional compensation in the amount equal to 12 months rent. Please see claim letter for further information.

[Reproduced as written]

In testimony, the tenant stated that there was no evidence that the respondent's daughter ever moved into the rental unit as the rental unit was listed for rent just 11 days after the end of the tenancy, for an increased monthly rent. According to the tenant, the respondent's son-in-law said the house was just being renovated, which took 40 days.

The tenant submitted that the rental unit is a part of the main home and is just separated by a temporary wall, further stating the original intent was that the rental space was to be a game room.

The tenant submitted that the respondent's evidence shows the respondent changed their mind and there was no evidence of a fall in June 2021. The tenant submitted further there were 5-6 ads on Craigslist.

Additional evidence filed by the tenant included Craigslist advertisements, text message and emails between the respondent's agent listing the property and the tenant's friends inquiring about the availability of the rental unit, with a confirmation on July 13, 2021, that the rental unit was taken, and a letter from the tenant's former landlord/seller confirming that they saw the Craigslist listing.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In the case before me, the undisputed evidence is that the tenant's landlord issued the tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49(5) of the Act, on March 19, 2021, for a final, effective move-out date of June 1, 2021. The tenant complied with the Notice and vacated on May 31, 2021.

The landlord marked on the Notice that all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or close family member intend in good faith to occupy the rental unit. The respondent was listed on the Notice as the purchaser.

Tenancy Policy Guideline 50 (Guideline) states that the landlord, or where applicable, the purchaser has the burden to prove they accomplished the stated purpose within a reasonable period after the effective date of the notice.

Section 51(2) of the Act provides that the landlord or purchaser who asked the landlord to give the notice to end the tenancy, 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, 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 that 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.

I find the evidence shows that the rental unit is an attached suite to the home, above the garage.

In this case, I find the evidence shows the respondent purchased the entire home with the intention of their multi-generation family living in the home. Further, the respondent submitted that their daughter and husband moved into the rental unit, which was the original purpose in June 2021. Afterwards, the respondent's husband suffered a fall on June 13 and a second fall on July 31, 2021, and was injured, according to the respondent. According to the respondent, it was necessary for their daughter to move into the main part of the home to care for their father, as he could not live independently. According to the respondent, the daughter moved into the main part of the home on August 24, and the entire family moved in on August 20, 2021.

For this reason, I find the rental unit was not used for the stated purpose for 6 months after the effective date of June 1, 2021. I therefore find the respondent must pay the tenant the amount of \$16,380, the equivalent of 12 times the monthly rent of \$1,365.

Section 51(3) of the Act authorizes me to excuse the purchaser from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the respondent from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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.

Tenancy Policy Guideline 50F outlines circumstances where it would be unreasonable and unjust for a landlord/purchaser to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

In these circumstances, I find the respondent submitted insufficient evidence to show extenuating circumstances.

I find this based on the respondent's inconsistent evidence. The tenant's compelling photographic evidence shows that the rental unit was advertised for rent by June 2021, for an increased rent of \$1,800. The Craigslist listing shows the rental unit was posted for rent on June 14, 2021, for immediate availability. I find this contradicts the respondent's evidence that the alleged second fall of the respondent's husband on July 31, 2021, was the ultimate cause of the respondent's daughter moving out of the rental unit into the main home. I also took into account that there was no evidence of an alleged fall on June 13, 2021, only medical records from July 31, 2021.

Apart from that, the rental unit is part of the residential property and is accessible quite easily to/from the main home. I find it reasonable that the respondent's daughter could still look after her father while living in the same home, without need to move into another part of the home and rent the rental unit for a higher rent.

The respondent's evidence shows that they undertook "extensive renovation and repairs after purchasing", and they moved in afterwards, on August 24, 2021, according to the respondent, which was along the same time the respondent's daughter said they moved into the main home.

As the respondent provided no evidence of a written tenancy agreement for the next tenants as to when they began living in the rental unit, I find the respondent submitted insufficient evidence that the next tenancy began in September 2021. I find it just as likely as not that the next tenants began living in the rental unit sometime in June 2021 or shortly thereafter, based on the tenant's photographic and documentary evidence showing the rental unit was already taken by early July 2021, and in the absence of a written tenancy agreement from the respondent showing when the next tenancy began.

The tenant's evidence from the realtor also indicated the rental unit was already off the market in June 2021.

For all these reasons, I find the respondent submitted insufficient evidence that there were extenuating circumstances preventing their daughter from occupying the rental unit for 6 months after the effective date of the 2 Month Notice as contemplated by the Act and Tenancy Policy Guideline, as the rental unit was put on the market almost immediately after the tenant vacated, for a higher rent.

As a result, I grant the tenant a monetary award of \$16,380, which is the equivalent of the monthly rent of \$1,365 for 12 months. I find merit with the tenant's application and award him recovery of the filing fee of \$100, pursuant to section 72(1) of the Act. As a result, I grant the tenant a monetary order (Order) of **\$16,480**, the equivalent of monthly rent of \$1,365 for 12 months, or \$16,380, and the cost of the filing fee of \$100.

Should the respondent fail to pay the tenant this amount without delay, the tenant must serve the Order on the respondent for enforcement purposes by means under section 88 of the Act. The respondent is informed that costs of such enforcement are recoverable from the respondent.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent in the amount of \$16,380 and recovery of the filing fee is granted. The tenant has been granted a monetary order for \$16,480.

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: April 15, 2023

Residential Tenancy Branch