



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) and to recover the cost of the filing fee.

The tenant and the landlords attended the hearing. The hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed. The landlord confirmed receipt of the tenant's evidence. The landlords did not file evidence.

Thereafter 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 they moved into the rental unit in May 2013. A written tenancy agreement filed in evidence shows a tenancy start date of May 1, 2021. The tenant submitted they vacated the rental unit on March 22, 2022. Monthly rent at the end of the tenancy was \$1,630. Filed in evidence was a written tenancy agreement.

The tenant's monetary claim is \$19,560, which is the equivalent of 12 times the monthly rent payable under the tenancy agreement, at \$1,630 per month.

The tenant wrote in their application the following:

#(rental unit address) has been my home for 9 years, in addition it has been at a cost of rent that was within my budget. The condo was sold and purchased by (landlord name) with the assurance it was an investment for him, and that I could stay. In January 2022 (landlord first name) notified me that he would not renew my lease as his son would be moving into the property. The son did not move into the property. The property was rented to someone else at a higher cost.

[Reproduced as written except for anonymizing personal information to protect privacy]

The Notice received from the landlord was dated January 25, 2022, listing an effective move-out date of April 30, 2022. Filed in evidence was the 2 Month Notice.

The reason for ending the tenancy states that the rental unit will be occupied by the child of the landlord or the landlord's spouse.

In response to the tenant's claim, the landlord proceeded first in the hearing.

The evidence showed the landlord purchased the property from the original landlord on October 16, 2021 as an investment property.

The landlord confirmed that their son, who originally intended on moving into the rental unit, did not move into the rental unit.

The landlord testified to the following: At the time the 2 Month Notice was issued, their son had a girlfriend and they both wanted to move into the rental unit. This resulted in the tenant being issued the 2 Month Notice. Afterwards, the landlord's son broke up with their girlfriend, leading to a difficult period for their son. The son had been subject to bullying and harassment at work. Additionally, their son applied for, but was not accepted, to medical school. This led to their son debating on whether they wanted to move into the rental unit, and ultimately did not want to take on the extra expenses.

The landlord said their wife researched online and found that males were more at risk for suicide after a break-up, so they were glad their son has been with them. Their intention in issuing the notice was for their son to live in the rental unit, but the circumstances changed. They explained their son's situation to the tenant, but the tenant was not sympathetic. They do not believe they have done anything wrong.

In response, the tenant asserted that they are entitled to the compensation as the stated purpose on the Notice was not accomplished. In documentary evidence, the tenant submitted that their move from their home of 9 years was very stressful.

Analysis

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

While I have reviewed the evidence submitted prior to the hearing and the oral evidence from the hearing, I refer to only the relevant evidence regarding the facts and issues in determining this Decision.

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

The 2 Month Notice was given to the tenant listing that the child of the landlord or landlord's spouse will occupy the rental unit.

Section 51(2) provides that if 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 if 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, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the landlord confirmed that their son never moved into the rental unit and instead, they rented out the rental unit, according to the tenant without dispute, for a higher price. I find the rental unit was not used for the stated purpose. I therefore find the landlord must pay the tenant the amount of \$19,560, the equivalent of 12 times the monthly rent at the end of the tenancy of \$1,630.

Section 51(3) of the Act authorizes me to excuse the landlord from paying the tenant the equivalent of 12 times the monthly rent if, in my opinion, extenuating circumstances prevented the landlord 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 50E outlines circumstances where it would be unreasonable and unjust for a landlord 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.

I find the evidence shows that the landlord's son changed their mind about moving into the rental unit because they broke up with their girlfriend, which I find under Policy Guideline as outline above is not an extenuating circumstance. The landlord's son was not prevented from occupying the rental unit, despite the change in their personal life.

For the above reasons, I therefore find the landlord submitted insufficient evidence of extenuating circumstances as contemplated by the Act and Tenancy Policy Guideline.

For the above reasons, I therefore find the tenant is entitled to monetary compensation equivalent to 12 months rent as the rental unit was not used for the stated purpose listed on the 2 Month Notice.

As a result, I grant the tenant a monetary award of \$19,560, which is the equivalent of the monthly rent of \$1,630 for 12 months.

I find merit with the tenant's application and award them recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

As a result, I grant the tenant a monetary order (Order) of **\$19,660**, the equivalent of monthly rent of \$1,630 for 12 months, or \$19,560, and the cost of the filing fee of \$100.

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

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent in the amount of \$19,560 and recovery of the filing fee is granted. The tenant has been granted a monetary order for \$19,660.

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.

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 13, 2023

Residential Tenancy Branch