Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation of $18,000.00 from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 28, 2021 ("Two Month Notice"); and to recover their $100.00 Application filing fee.

The Tenants and an non-participating representative for the Landlord, A.S., appeared at the teleconference hearing, and the Tenants gave affirmed testimony.

A.S. said that he was only present to ask for an adjournment of the hearing for the Landlord, as the Landlord was out of the country. However, the Landlord had not submitted permission for A.S. to represent him, even in this limited capacity. Still, I asked the Tenants if they were willing to adjourn the matter so that the Landlord could participate, and they were opposed to this suggestion. Given the Tenants' opposition, and because there were no instructions in the file from the Landlord about A.S. participating and/or the need for an adjournment, I declined to agree to the adjournment, pursuant to Rule 7.9 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, with the agreement of the Tenants, I allowed A.S. to remain on the line to take notes for the Landlord.

I explained the hearing process to the Tenants and gave them an opportunity to ask questions about it. During the hearing, the Tenants were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing, Application, and evidence. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The

Tenants testified that they served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on July 22, 2022. They indicated that this was an amendment to their first Application and service, as they had sent it to the wrong address initially. The Tenants provided a Canada Post tracking numbers as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents and the Tenants' evidence in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenants in the absence of the Landlord. I further note that the appearance of A.S. at the hearing indicates that the Landlord was aware of the process, and therefore, had an opportunity to submit evidence and participate.

The Tenants said that they had not received anything from the Landlord about this matter, nor had the RTB received any evidentiary submission from the Landlord.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenants that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the $100.00 Application filing fee?

Background and Evidence

The Tenants confirmed that the periodic tenancy began on April 1, 2017, with a monthly rent of $1,500.00, due on the first day of each month. They confirmed that they had paid the Landlord a security deposit of $750.00, and a $750.00 pet damage deposit. The Tenants confirmed that these deposits were both returned to them in full. The Tenants said that the tenancy ended when they vacated the residential property on December 31, 2021, pursuant to the Two Month Notice.

The Tenants confirmed the details of the Two Month Notice, as follows: The Two Month Notice was signed and dated November 28, 2021, it has the rental unit address, it was served via email on November 28, 2021, and in person on November 30, 2021. The Two Month Notice has an effective vacancy date of January 31, 2022, and it was served on the grounds that the purchaser or a close family member intends in good faith to occupy the rental unit.

In the hearing, the Tenants explained their claim, as follows:

> As we went over, on November 28th we received the Two Month Notice instructing us to be out on January 31st. Fast forwarding, they re-listed the home on December 12th. From November 28th to December 12th, they had already listed the home. Now without a tenant, it's a much easier sale for the home. On December 16th, they resold the home for a $70,000.00 profit from the time they purchased it two months prior.
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> They give the reason on the notice that they intended to occupy the suite. But they were just trying to flip the house for a profit by getting the Tenants out, unless they provide a good reason why they sold the home. That's quite a bit of profit in a two month period.

The Tenants provided "proof of sale" in a real estate listing document of the rental unit address with a sale date of the residential property on December 16, 2021.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51 (2) of the Act states that a landlord must pay the tenant an amount that is equivalent to 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.

In the Two Month Notice dated November 28, 2021, the purchasing Landlord indicated that they or a close family member, intended in good faith to occupy the rental unit.

The Tenants gave evidence that instead of being occupied by the purchasing Landlord or a family member, the residential property was again placed on the market for sale by the purchasing Landlord. The Tenants provided documentary evidence by way of the online listings showing the sale of the residential property subsequent to the issuance of the Two Month Notice.

I accept the evidence that the Landlord did not use the rental unit for the purpose stated on the Two Month Notice. Consequently, I find that the Landlord breached section 49 of the Act and that the Tenants are entitled to a monetary award of $18,000.00. This is equivalent to 12 times the monthly rent of $1,500.00 payable under the tenancy agreement. I **award the Tenants** with **$18,000.00** from the Landlord pursuant to sections 51 (2) and 67 of the Act.

As the Tenants were successful in their Application, they are also entitled to recover their **$100.00** Application filing fee from the Landlord, which fee I award the Tenants pursuant to section 72 of the Act.

I, therefore, grant the Tenants a **Monetary Order** of **$18,100.00** from the Landlord, pursuant to sections 51 (2) and 67 of the Act.

Conclusion

The Tenants are successful in their Application, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities. The Tenants are also awarded recovery of their $100.00 Application filing fee from the Landlord.

Pursuant to sections 51 (2) and 67 of the Act, **I grant the Tenants a Monetary Order** of **$18,100.00** from the Landlord. This Order must be served on the Landlord by the

Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 05, 2023

Residential Tenancy Branch