



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 the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant's support person K.T. attended the hearing. The landlord called witness M.M. who provided affirmed testimony.

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Service

The tenant testified that the landlord was served with the tenant's application for dispute resolution and evidence via registered mail on July 27, 2022 and in person on November 2, 2022. The tenant testified that the registered mail package was not picked up. The landlord testified that he received the tenant's application for dispute resolution and evidence in person in November 2022 around the time the tenant testified it was served. I find that the tenant's application for dispute resolution and evidence were served on the landlord in accordance with section 89 of the *Act*.

The landlord testified that the tenant was not served with the landlord's evidence, but the landlord's evidence was uploaded to the Residential Tenancy Branch.

Section 3.15 of the *Rules* states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I find that the landlord provided the Residential Tenancy Branch with the landlord's evidence six clear days before the hearing and did not provide the tenant with the landlord's evidence whatsoever.

I find that the tenant would be prejudiced by the consideration of the landlord's evidence because the landlord did not serve the tenant with that evidence before the hearing and the tenant did not have an opportunity to review that evidence. For failure to serve, the landlord's documentary evidence is excluded from consideration.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Evidence/Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- this tenancy began on May 1, 2015,
- this tenancy ended on May 30, 2022 pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), and
- monthly rent in the amount of \$1,000.00 was payable on the first day of each month.

The Notice was entered into evidence, is dated March 21, 2022 and has an effective date of May 31, 2022. Both parties agree that the landlord emailed the Notice to the tenant on March 22, 2022.

The tenant testified that she filed this application for dispute resolution because after she moved out she returned to the unit to collect some mail and an Airbnb renter opened the door, not the landlord.

The tenant testified that she then looked the subject rental property up on Airbnb and found it listed for rent. Airbnb advertisements for the subject rental property were entered into evidence.

The landlord testified that he moved into the subject rental property immediately after the tenant moved out. The landlord testified that he is an engineer and needs to travel periodically for his work. The landlord testified that he rented the subject rental property on Airbnb when he was out of the country for work.

The landlord called M.M. as a witness. Witness M.M. testified that:

- the landlord moved into the subject rental property sometime around the summer of last year,
- he is the landlord's neighbour,
- he did not know the landlord before the landlord moved into the subject rental property, and
- he sees the landlord quite frequently at the subject rental property.

Both parties agree that the November 2, 2022 personal service of the tenant's application for dispute resolution to the landlord occurred at the subject rental property.

Based on the testimony of the landlord and witness M.M., I find that the landlord moved into the subject rental property shortly after the tenant moved out and resided there for living accommodation. Based on the landlord's testimony, the fact that the landlord was served with the Application for Dispute Resolution at the subject rental property, and witness M.M.'s testimony, I find that the landlord currently resides in the subject rental property.

Based on the tenant's Airbnb evidence and the testimony of the landlord, I find that since moving in, the landlord has rented the subject rental property for periods of time on Airbnb. I accept the landlord's testimony that the rentals coincide with work related absences from the country. I note that this testimony was not disputed by the tenant.

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

- (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.

Residential Tenancy Branch Policy Guideline 2A states:

...a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space...

I find that had the landlord been away for work and did not rent the subject rental property out, the short term stays away from the subject rental property for work would not have changed the fact that he occupied the property for living accommodation.

I find that the fact that the landlord rented the subject rental property out on Airbnb while he was out of town does not diminish his occupation of the premises and that as the owner of the subject rental property, it was his prerogative to rent the subject rental property for short terms while he was away. I find that the short-term rentals do not alter my finding that he is occupying the subject rental property as living accommodation.

I find that the landlord has occupied the subject rental property since shortly after the tenant moved out and continues to occupy the property. I find that the landlord accomplished the stated purpose for ending the tenancy within a reasonable period of time after the tenant moved out and that the rental unit has been occupied by the landlord for more than six months. Pursuant to my above findings, I find that the tenant is not entitled to 12 months rent.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The tenant's application for dispute resolution is dismissed without leave to reapply.

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: April 03, 2023

Residential Tenancy Branch