Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 51(2) for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

L.B. and T.T. appeared as the Tenants. The Tenants were represented by their advocate, M.N.-S.. J.N. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenants' advocate advised that the Notice of Dispute Resolution was served via registered mail and was received by the Landlord on September 28, 2022 as per tracking information. The Landlord acknowledges receiving the Notice of Dispute Resolution. I find that the Tenant's application was served on the Landlord in accordance with s. 89 of the *Act*.

The Tenants have provided me a copy of a Two-Month Notice to End Tenancy signed on April 27, 2022 (the "Two-Month Notice"). The Landlord says that she was not served with this document, though confirms that she did issue it and does not object to its inclusion into evidence. I confirmed the relevant details of the Two-Month Notice with the Landlord. Given the Landlord's lack of objection and that the relevant details were confirmed, I find it would not be procedurally unfair to include and consider the Two-Month Notice despite it not having been served as evidence by the Tenants.

Preliminary Issue – Landlord's Evidence and Adjournment Request

The Landlord provided evidence to the Residential Tenancy Branch on May 18, 2023, which is the same day as the hearing. When I asked whether the Landlord had served her evidence, she advised that it had not been served on the Tenants.

Rule 3.15 of the Rules of Procedure requires respondents to serve the evidence upon which they intend to rely on the named applicants, who must receive it at least 7 days prior to the hearing. In this instance, as the evidence was not served, I find it would be procedurally unfair to consider it such that it is excluded.

The Landlord explained that she has been dealing with personal issues, namely that her father has been diagnosed with a terminal illness in April 2023 such that she has not been able to devote sufficient attention to this matter. She requested an adjournment request to permit her time to serve her evidence.

The Tenants' advocate disputed the adjournment request saying that the matter had been filed and served sometime ago such that the Landlord had more than sufficient time to serve her evidence.

I appreciate she is dealing with difficulties at the present time. However, by her own submissions her personal issues arose in the spring of 2023. The Tenant's application was filed and served in September 2022. There is no explanation from the Landlord why she could not have served her evidence in the months prior to April 2023.

Further, there would be significant prejudice to the Tenants in delaying this matter to permit the Landlord a second opportunity to serve her evidence in response to the application. Again, the Landlord had more than sufficient notice. Despite this, she failed to act in a timely manner.

I denied the Landlord's adjournment request.

Issues to be Decided

1) Are the Tenants entitled to compensation equivalent to 12 months' rent?
2) Are the Tenants entitled to their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on November 14, 2021.
- The Tenants moved out of the rental unit, with the Tenants saying on June 30, 2022 and the Landlord saying July 5, 2022.
- Rent of $2,000.00 was due on the first of each month.

I am told that there was no written tenancy agreement. The parties advise that the subject rental unit is an upper unit at the residential property and that there was also a basement suite.

I am provided with the Two-Month Notice by the Tenants. It lists an effective date of June 30, 2022 and that it was issued on the basis that Landlord's child would occupy the rental unit. The Landlord confirmed having served the Two-Month Notice on the Tenants.

Tenant's Claim of Compensation Equivalent to 12 Months' Rent

Pursuant to s. 51(2) of the *Act*, provided extenuating circumstances as defined by s. 51(3) are not present, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

The Landlord explained that her daughter graduated in June 2022 and was enrolled to attend post-secondary studies in the same community as the rental unit. The Landlord says that her daughter, her daughter's boyfriend, and her daughter's friend were to move into the rental unit. She says that her daughter did, in fact, move into the rental unit sometime in mid to late July 2022.

The Landlord tells me that there was a falling out between her daughter and her friend and that she broke up with her boyfriend. As explained to me, the rental unit was occupied on the premise that the daughter and the two others would share costs, but with the two leaving it made little sense for the daughter to remain in the rental unit. I am told by the Landlord that her daughter moved into the basement suite and that the rental unit was rented out to another tenant, who moved into it on September 1, 2022.

The Landlord also explained that the Tenants rented the rental unit, which included the yard and garage. The Landlord drew a distinction between the Tenants' tenancy and the current tenant's tenancy as the current tenant does not have access to the yard and garage.

In this instance, the Landlord admits that the rental unit was occupied by her daughter for less than two months. It is irrelevant that the Tenants had access to the yard and garage, whereas the current tenant does not. To be clear, the tenancy was for the rental unit, which is a living accommodation rented by a tenant as defined by s. 1 of the *Act*. The Tenants may have had use for the yard and garage. However, they clearly used the rental unit as their living accommodation.

I find that the Landlord has failed to show that the purpose stated in the Two-Month Notice had been fulfilled. Indeed, the Landlord admits that it had not been.

Pursuant to s. 51(3) of the *Act*, a landlord may be excused of a compensation claim under s. 51(2) if there are extenuating circumstances which prevent the landlord from carrying out the stated purpose set out under the notice issued under s. 49. Policy Guideline #50 provides some guidance on what may be considered extenuating circumstances, providing examples such as the death of the would-be occupant or the destruction of the rental unit in a natural disaster.

In this instance, I find that there are no extenuating circumstances excusing the Landlord from liability under s. 51(2) of the *Act*. There was nothing preventing the daughter from continuing to reside within the rental unit. I appreciate that it may have been somewhat more convenient for her to occupy the basement suite rather than the larger rental unit. However, mere inconvenience is no excuse. The Landlord cannot then change her mind after issuing the Two-Month Notice which ended the tenancy.

I find that the Tenants are entitled to compensation under s. 51(2) of the *Act* in the amount of $24,000.00 ($2,000.00 x 12).

As the Tenants were successful, I find they are entitled to their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay Tenants' $100.00 filing fee.

Conclusion

The Tenants are entitled to compensation under ss. 51(2) and 72(1) of the *Act* totalling **$24,100.00**. I order that the Landlord pay this amount to the Tenants.

It is the Tenants' obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: May 18, 2023

Residential Tenancy Branch