Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC

Introduction

The Tenant seeks an order pursuant to s. 51(2) of the *Residential Tenancy Act* (the "*Act*") for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement.

F.C. appeared as the Tenant. M.T. appeared as the Landlord and was joined by his spouse, S.T..

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.

Preliminary Issue – Service of Documents

At the outset of the hearing, I enquired on whether the parties had served each other with their application materials. The Tenant advised having served her application and evidence, though the Landlord acknowledges receipt of the Notice of Dispute Resolution, a notice to end tenancy and a real estate listing. The Tenant explained that she sent a second evidence package in the week prior to the hearing.

Dealing first with the documents that were acknowledged to have been received, I find that pursuant to s. 71(2) of the *Act* the Notice of Dispute Resolution, notice to end tenancy, and real estate listing were sufficiently served on the Landlord.

Rule 3.14 of the Rules of Procedure establishes the deadline for service of additional evidence by applicants, specifying that such evidence must be received by the

respondents at least 14 days prior to the hearing. In this instance, I find that the Tenant served her additional evidence in breach of Rule 3.14, which deprived the respondent Landlord of the right to respond in compliance with Rule 3.15. Accordingly, I find that it would be procedurally unfair to include and consider the Tenant's additional evidence as is it was not served properly. As such, it is excluded.

The Landlord advises that his response evidence was served via registered mail sent on April 25, 2023. Tracking information shows it was received on April 28, 2023. The Tenant acknowledges receipt of the Landlord's evidence. I find that the Landlord's evidence was served in accordance with s. 88 of the *Act*.

Preliminary Issue – Tenant's Previous Application

During the hearing, the Landlord raised issue with the Tenant having filed an application seeking this relief only to withdraw it in July 2022. The Landlord provides me the file number on the previous matter. The Landlord argued that it was their understanding that the Tenant could not reopen the matter as she had previously withdrawn it.

The Rules of Procedure, which permits withdrawal of an application by an applicant under Rule 5.0.1, does not specify that the effect of withdrawing the application means an applicant cannot later refile for the same relief. Review of the automated email sent to the parties on the previous application states that "Disputes that are withdrawn cannot be reopened". However, that means that the previous application could not be reopened, it does not me a new application cannot later be filed.

To be clear, the Tenant reserves the right to have her claim adjudicated on its merits provided she filed within the limitations period imposed by s. 60 of the *Act*. The previous application that was withdrawn has no impact. Further, there is no dispute that the tenancy ended on or about September 29, 2020 and review of the file shows this application was filed on September 11, 2022, such that the Tenant filed on time.

The matter may proceed and be determined on its merits.

Issue to be Decided

1) Is the Tenant entitled to compensation under s. 51(2) of the *Act*?

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 Tenant moved into the rental unit in January 2017.
- The Tenant vacated the rental unit on or about September 29, 2020.
- Rent of $1,600.00 was due on the first day of each month.

Compensation Claim under s. 51(2)

Pursuant to s. 51(2) of the *Act*, provided s. 51(3) does not apply, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement if they were served with a notice to end tenancy issued under s. 49 and:

- steps were not taken within a reasonable period of the effective date of the notice to accomplish the stated purpose for ending the tenancy; or
- the rental unit has not been used for that stated purpose for at least 6 months.

The parties confirm that the Tenant was served with a Two-Month Notice to End Tenancy signed on June 29, 2020 (the “Two-Month Notice”), a copy of which has been provided to me. The Two-Month Notice lists an effective date of August 31, 2020 and states it was issued because the Landlord’s child would occupy the rental unit.

The parties further confirm that the Two-Month Notice was received in early July 2020 as it was sent by mail at the end of June. I am told that the Tenant, and her co-tenant, took the position that the effective date of the notice was incorrect, which is why they moved out in late September.

According to the landlords, their son was moving back to the community after his in person graduate studies were disrupted by the COVID-19 Pandemic. The plan was that he would move into the rental unit beginning in September 2020. It was explained to me that the son was moving from out of province and due to the various challenges caused by provincial lockdowns he needed a place to live when he got the community in early

September. As the Tenant and her co-tenant did not vacate the rental unit, I am told that the son found accommodation elsewhere.

I do not find that the Tenant overheld on the rental unit in these circumstances. Section 49(2)(a) of the *Act* required that the Tenant be given at least 2 months notice prior to ending the tenancy. It is undisputed that the Tenant received the Two-Month Notice in early July, such that effective date of August 31, 2020 was incorrect. However, by application of s. 53 of the *Act*, the effective date was automatically corrected to September 30, 2020.

The Landlord explained that when the Tenant and her co-tenant moved out, there was extensive repair needed to the rental unit. The Landlord explained that he moved into the rental unit to complete the work but that because of lockdown issues due to the pandemic, he struggled to complete the work himself.

The Landlord further explained that he lives in another community and was concerned that with travel restrictions taking effect, he would be stuck in the rental unit away from home. The landlords say they decided that to sell the rental unit, listing it in October 2020 and selling it on December 17, 2020.

The Landlord argues extenuating circumstances, namely the combined effect of the Tenant moving out in September 2020 and the pandemic, prevented his son from moving into the rental unit.

Under 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 guidance on what may constitute extenuating circumstances, including examples such as the death of a would-be occupant or the destruction of the rental unit in a natural disaster.

I accept that issues arose with the son moving into the rental unit on September 1, 2020 due to Tenant continuing to occupy the rental unit. However, as noted above, this issue arose due to the Landlord's failure to ensure that the Two-Month Notice was served and received by the Tenant such that the minimum 2-month notice requirement set by s. 49(2)(a) had been met. In other words, the issue with the son not having a place to live when he got to the community is a direct result of late service by the Landlord, rather than the Tenant overholding the rental unit.

I further accept that the Tenant vacating the rental unit at the end of September 2020 had a cascade effect which resulted in the sale of the property. I appreciate the challenges present in the fall of 2020 due to the pandemic such that the property's sale was more convenient for the Landlord than undertaking repairs in a community away from home, particularly when his son had found accommodation elsewhere.

However, I do not find that these are extenuating circumstances. To be clear, the purpose for the Two-Month Notice was that the Landlord's child, his son, would occupy the rental unit. There is no dispute that did not occur. The reason that did not occur was because the Landlord failed to provide the Tenant with sufficient notice such that the August 31, 2022 date could enforced. All the issues that took place afterwards are a direct result of that failure.

Further, there is no explanation why the son could not have moved into the rental unit after the Tenant did vacate other than that the son had already found someplace else to live. I appreciate it may have been more convenient to sell the property under the circumstances, however, the guidance in Policy Guideline #50 sets a high bar for what may constitute extenuating circumstances and I find that that those are not present here.

I find that the stated purpose of the Two-Month Notice was never fulfilled and that extenuating circumstances are not present. Accordingly, I find that the Tenant is entitled to compensation under s. 51(2) of the *Act* equivalent to $19,200.00 ($1,600.00 x 12).

Conclusion

I find that the Tenant is entitled to compensation of **$19,200.00** under s. 51(2) of the *Act* and shall receive an order in that amount.

It is the Tenant's responsibility to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenant 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 25, 2023

Residential Tenancy Branch