



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on August 10, 2022 seeking compensation for the end of the tenancy, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 4, 2023 and May 10, 2023.

Both the Tenant and their former Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. The matter was adjourned to ensure each party received the evidence of the other.

Issues to be Decided

- Is the Tenant entitled to monetary compensation for the Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”), pursuant to s. 51 of the *Act*?
- Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement in their evidence. This shows the tenancy started on November 17, 2020, for the rent amount monthly of \$2,150. On the Application, the Tenant provided the rent amount of \$2,182.25 monthly.

The Landlord issued the Two-Month Notice on July 23, 2022. This set the end-of-tenancy date for September 30, 2022. The Tenant provided their final move-out date of August 5, 2022 in the hearing.

In the hearing, the Tenant described seeing an online advertisement for the rental unit on August 7, after their move out. They provided images of the ad and a translation in the evidence. The Tenant viewed the rental unit online by way of an appointment with a relation of the Landlord. There were text messages in relation to this, through which the Tenant learned the asking rent was \$3,400. The video of a viewing of the rental unit is in the Tenant's evidence. The Tenant realized this was their former rental unit, and then filed this dispute resolution Application at the Residential Tenancy Branch on August 10.

The Tenant described another online ad from a property management company, on August 14 or 15. This is also in the Tenant's evidence, showing the asking rent of \$3,600. The Tenant tried to secure another visit to ascertain whether this was their former rental unit; however, "the Landlord and [the agent] didn't get back to us for any further information on the request."

In their written description, the Tenant noted this ad was removed completely, and they received no further response from the Landlord in answer to their inquiries on the unit. The Tenant wrote: "landlord is likely well recognizing the situation and try to rent the unit out privately without noticing us."

In the hearing, the Landlord presented the following:

- at the time they issued the Two-Month Notice they were out of the country
- they did not rent to new tenants after the Tenant moved out or otherwise earn income from this rental unit
- they wanted to have a plan in place for what became "a dire living situation" – this involved the Landlord holding a mortgage for the rental unit when they were not able to use it themselves as they had planned

- they proposed a mutual agreement to end the tenancy, based on communication they had with the Tenant; however, the Tenant reneged on this idea because they could not find a new place to rent by September 30 – this was the reason for the Landlord issuing the Two-Month Notice
- the Landlord had travel scheduled because of the proposed mutual agreement in place; this involved quarantine when travelling from one country to another, and expensive air tickets
- they ended up staying in another country until January 2023 – they wanted to return to Canada but could not, due to travel restrictions – this involved contracting COVID in one jurisdiction, which effectively barred them from entry to another
- with their plans ruined, the rental unit was not being used and was effectively “useless”, so the Landlord posted an ad online just to gauge interest in the rental unit – when they realized this was not a viable solution, they removed the online ads
- the property management company came along and placed another ad at the Landlord’s request; however, that ad was in place for a single day and then removed

In the Landlord’s evidence, they provided the following material:

- their notification to the property management company, dated July 11, 2022, that they were going to move back to Canada at the end of August, asking for the tenancy to end – this was the Landlord’s plan to be back in Canada at the end of August
- the property manager followed up with Landlord to state the Tenant was asking to mutually end the tenancy on August 15, 2022, with one month compensation from the Landlord – by July 19 the property manager confirmed they were going ahead with a mutual agreement with the Tenant
- on July 22 the property manager notified the Landlord that the Tenant did not sign the mutual agreement because “[the Tenant] has not secured a new place yet.” – the property manager queried whether the Landlord would issue a Two-Month Notice, thus ending the tenancy by September 30 – the Two-Month Notice was served by the property manager on the Landlord’s behalf on July 23
- on July 28, the property manager informed the Landlord that the Tenant gave 10 days’ of notice to move out by August 5
- a bank statement proving that they did not have adequate funds going forward if they left the rental unit unrented – this was when they “contemplated if I could rent it out” – after finding out this was against the *Act*, the “apartment was not

rented out and the apartment does not generate any income ever after [the Tenant's] moving out"

- proof of their need for covid testing in Europe

In response to what they heard from the Landlord in the hearing, the Tenant takes the position that the Landlord was bound to follow legal procedure by issuing a Two-Month Notice. They were not "blocking" the Landlord by not mutually agreeing to end the tenancy; rather, they were limited by the availability of rental units that were suitable to them at that time.

The Tenant made this Application because they felt the Landlord did not accomplish the stated purpose for ending the tenancy. They claimed the amount provided for in the *Act*: \$26,187.00, which is 12 times the amount of rent (\$2,182.25).

Analysis

The *Act* s. 49 allows for a landlord to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in the situation where a landlord issues a Two-Month Notice. This is covered in s. 51:

- (1) A tenant who receives a notice to end tenancy under s. 49 is entitled to receive from the landlord . . . an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (2) Subject to subsection (3), the landlord . . . must pay the tenant . . . 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 of 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.
- (3) The director may excuse the landlord . . . if, in the director's opinion, extenuating circumstances prevented the landlord . . . from
 - (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
 - (b) 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.

In this situation I find the Landlord did not accomplish the purpose for which they ended the tenancy. That was for their own use of the rental unit. Though the Landlord

submitted they were forced into issuing the Two-Month Notice, I find they still issued that document to the Tenant and this was their discretion. I find as fact the Landlord did not use the rental unit, and this continued through to at least January 2023.

The Tenant submitted the Landlord advertised the rental unit online. I find as fact that the rental unit was shown as available, with a set rental rate, online in early August, very soon after the tenancy ended. I note the Tenant moved to a new accommodation very close to their former rental unit – likely this is even two doors away, being on the same floor at the same rental unit property. The Tenant did not show definitively that the Landlord rented out the rental unit to new tenants at any time. I find the Tenant would be in the best place to see if that was the case; however, the Tenant did not submit or give evidence that the Landlord had new tenants in the rental unit.

I find as fact the Landlord removed the online ads, virtually as soon as they were posted. In the circumstances, I find it reasonable that the Landlord was weighing options available to them, given their travel quandary.

I excuse the Landlord because they proved, on a balance of probabilities, that they faced very difficult travel restrictions and limitations at that time. They were in various jurisdictions around the world at the time of quarantines, proven test results, and limited travel resources. I do agree with the Landlord that the Tenant's earlier departure complicated their plans that much more. I find what the Landlord presented in the hearing, and in their evidence, proved that extenuating circumstances prevented them from accomplishing the stated purpose for ending the tenancy.

I excuse the Landlord from paying the monetary amount outlined in s. 49(2). I dismiss the Tenant's Application in whole, without leave to reapply. Because the Tenant was not successful in this Application, I grant no reimbursement of the Application filing fee to the Tenant.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 7, 2023