



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNL, MNRT, MNDCT, RR, LRE, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on January 9, 2023, under the *Residential Tenancy Act* (the Act), and three amendments to the Application (Amendments), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice);
- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice);
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement;
- Recovery of costs incurred to complete emergency repairs;
- Compensation for monetary loss or other money owed;
- A rent reduction for repairs, services, or facilities agreed upon but not provided; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 am on May 5, 2023, and was attended by the Tenant and the Landlord. All testimony provided was affirmed. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP) and Amendments, and stated that there are no concerns regarding the service dates or methods, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their

evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

Matter #1 – Naming of Parties

The Tenant stated that their full legal name was not provided on the Application. The Application was amended to reflect their full name as given to me at the hearing.

Matter #2 – Issues Severed and Withdrawn

In their Application the Tenant sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. The parties also agreed that the Tenant vacated the rental unit on April 16, 2023. As a result, the following claims were dismissed without leave to reapply:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice);
- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice);
- An order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement.

The Tenant remains at liberty to reapply for the following claims, should they wish to do so:

- Recovery of costs incurred to complete emergency repairs; and
- A retroactive rent reduction for repairs, services, or facilities agreed upon but not provided.

As a result, the hearing proceeded based only on the Tenant's claim for compensation for monetary loss or other money owed, as the Tenant is seeking compensation related to the Two Month Notice under section 51(2) of the Act, and recovery of the filing fee.

Issue(s) to be Decided

Is the former Tenant entitled to compensation in the amount of 12 times their monthly rent, pursuant to section 51(2) of the Act?

Is the former Tenant entitled to recovery of the filing fee?

Background and Evidence

The parties agree that the tenancy ended on April 16, 2023, because of a Two Month Notice posted to the door of the rental unit on December 30, 2022, and received by the Tenant the same day. A copy of the Two Month Notice was provided for my review and consideration. It has an effective date of February 28, 2023, and states that it was served because the rental unit will be occupied by the Landlord or the Landlord's spouse. The parties also agreed that the rental unit was a single-family home, the entirety of which was originally rented by the Landlord to the Tenant and a co-tenant with the initials DL.

Although the parties agreed that DL vacated the rental unit several months after the start of the tenancy, they disagreed about whether Y, who moved into the rental unit on April 1, 2022, was the Tenant's roommate, and therefore an occupant of the rental unit, or a Tenant of the Landlord under a separate tenancy agreement. The Tenant stated that Y was their roommate and paid \$750.00 per month towards rent. The Tenant also stated that they remained responsible to pay the full \$2,100.00 in rent each month as set out under their tenancy agreement, regardless of whether Y paid their contribution towards rent or not. The Landlord disagreed, arguing that Y should be considered their Tenant as Y paid funds directly to them.

Based on the above, the Tenant argued that they are entitled to seek 12 times the monthly rent amount of \$2,100.00 under section 51(2) of the Act. The Landlord disagreed and stated that if the Tenant is entitled to compensation under section 51(2), which they do not believe they are, the Tenant should only be entitled to seek 12 times \$1,350.00, as Y was responsible for \$750.00 of rent each month.

The parties agreed that no amount of rent was paid by the Tenant for April of 2023. However, the Landlord stated that Y paid them \$750.00 for April of 2023 and never vacated the rental unit as they kept them on as their roommate. The Tenant did not dispute that the Landlord moved into the rental unit as required, but argued that by keeping Y as a roommate who pays them rent, they acted contrary to Residential Tenancy Policy Guideline (Policy Guideline) #2A and did not use the rental unit exclusively for their own use, or the use of a close family member, as required. The Tenant therefore sought \$25,200.00 pursuant to section 52(2) of the Act. The Landlord argued that the Tenant is not entitled to any compensation under section 51(2) of the Act as they occupied the rental unit as required. The Landlord stated that they spoke to the Residential Tenancy Branch (Branch) and were advised that they were welcome to have roommates if they themselves moved in.

The Tenant also sought compensation under sections 50 and 51 of the Act. Although the Tenant agreed that they withheld rent for April of 2023, they stated that as they only occupied the rental unit for 16 days in April and ended their tenancy early under section 50(1) of the Act, they should be entitled to monetary compensation from the Landlord for the additional 19 days in April where they did not occupy the rental unit, to ensure that they received their full one months compensation as set out under section 51(1) of the Act. The Landlord disagreed that the Tenant gave proper notice under section 50(1) of the Act but stated that regardless, they waived the need for the Tenant to give proper notice under section 50(1) of the Act to end the tenancy early. The Landlord stated that the Tenant should not be entitled to this compensation as they purposefully delayed vacating the rental unit by filing the Application, which is an abuse of process.

Analysis

I am satisfied that the tenancy ended on April 16, 2023, when the Tenant vacated the rental unit, and that the tenancy ended due to the Two Month Notice. I am also satisfied that the Landlord occupied the rental unit within a reasonable period after the effective date of the notice, and for at least six months duration thereafter.

For the following reasons, I am satisfied that Y was the Tenant's roommate and an occupant of the rental unit, rather than a tenant under either the Tenant's tenancy agreement, or a separate tenancy agreement with the Landlord. The parties agreed that the Tenant and their former Co-Tenant DL, rented the entire single-family home under their tenancy agreement at \$2,100.00 per month. Although it was open to the parties to amend the written tenancy agreement to remove DL as a tenant when they vacated, and to add Y as a tenant when they moved-in, this was not done. This suggests to me that the Tenant's version of events is correct, and that Y was their roommate and an occupant, not a tenant under the tenancy agreement. Further to this, I find that the Landlord would not have been entitled under the Act to enter into a new tenancy agreement with Y for any portion of the rental unit, as the Tenant was entitled to possession of the entire single-family home under their tenancy agreement.

Having made this finding, I am therefore satisfied that rent in the amount of \$2,100.00 was due each month under the Tenant's tenancy agreement. The Landlord's argument that the Tenant can only seek compensation under section 51(2) of the Act in relation to \$1,350.00 in rent is therefore dismissed. However, I am also satisfied that the Tenant's roommate Y, who was an occupant of the rental unit, paid \$750.00 of this rent amount directly to the Landlord each month.

There was no disagreement that the Landlord moved into the rental unit within a reasonable period and occupied it for at least six months thereafter. However, there was a dispute between the parties about whether the Landlord's choice to have a roommate, means that the Landlord did not follow through with the stated reason for ending the tenancy set out in the Two Month Notice and therefore whether the Tenant was entitled to 12 months compensation under section 51(2) of the Act. Although Policy Guideline #2A states that a landlord cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it, the Landlord stated at the hearing that they share a kitchen and bathroom with their roommate Y. As a result, I am satisfied that the entirety of the reclaimed rental unit is being occupied by them, except for one bedroom. The wording "in general" used in the Policy Guideline with regards to occupancy of the entirety of the reclaimed rental unit by the Landlord satisfies me that circumstances such as the one now before me, where the Landlord has moved in as required but chose to have a roommate, were contemplated, and not intended to give rise to an entitlement to compensation under section 51(2) of the Act. Further to this, no evidence was presented by either party that the Landlord reconfigured the rental unit to add a separate and private portion for rent, such as a new suite.

Based on the above, I therefore dismiss the Tenant's claim for compensation under section 51(2) of the Act without leave to reapply. I do however grant the Tenant compensation in the amount of \$630.00 pursuant to section 51(1) of the Act. Although the Landlord denied the Tenant's testimony that they gave proper notice under section 50(1) of the Act to end their tenancy early, they admitted that they waived the requirement for the Tenant to give notice under section 50(1) of the Act. As a result, I find that I do not need to resolve this conflict.

The parties agreed that the Tenant was responsible for \$1,350.00 of April's rent as Y paid the Landlord \$750.00 for April and never vacated. As the Tenant remained in the rental unit for 16 days in April without paying rent, I find that they are considered to have received compensation at a per diem rate of \$45.00 per day (\$1,350.00/30 days). The Tenant is therefore entitled to \$630.00 in compensation under section 50(1) of the Act (\$1,350.00, less \$720.00). As the Tenant was at least partially successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$730.00**, and I order the Landlord to pay this amount to the Tenant. The Tenant is provided with this order in the above terms and the Landlord must be served with this order as soon as possible. Should the Landlord fail to comply with this order, it may be filed in 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 Branch under Section 9.1(1) of the Act.

Dated: June 2, 2023

Residential Tenancy Branch