



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with a tenant's application for compensation payable to a tenant where the landlord does not use the rental unit for the purpose stated on the *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 month Notice"), as provided under section 51(2) of the Act.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the parties had exchanged their respective hearing materials upon each other. The parties confirmed they were prepared to proceed and had no objection to admittance of the evidence submitted and served. The parties also confirmed they were not making an unofficial audio recording of the proceeding.

I was provided a considerable amount of evidence, including testimony and documentation, all of which I have considered in making this decision; however, with a view to brevity in writing this decision I have only summarized the parties' respective positions and referenced the most relevant of evidence I have relied upon.

Issue(s) to be Decided

1. Did the tenancy end pursuant to a *Two Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") and, if so, did the landlords use the rental unit for the purpose stated on the 2 Month Notice?
2. If the landlords did not use the rental unit for the stated purpose starting within a reasonable amount of time after the tenancy ended and for at least six months,

did the landlords establish that an extenuating circumstance prevented them from doing so?

3. Is the tenant entitled to compensation equivalent to the sum of 12 months' rent under section 51(2) of the Act and, if so, the amount payable to the tenant?

Background and Evidence

The parties executed a written tenancy agreement for a tenancy that started on December 15, 2011. The tenant paid a security deposit of \$475.00 and was required to pay rent of \$950.00 on the first day of every month.

In September 2019 the landlord approached the tenant about increasing the monthly rent. The parties proceeded to negotiate and appeared to come to agreement, via email, that every month starting November 1, 2019 the tenant would: pay the landlords \$950.00 by cheque, pay the landlords \$150.00 in cash, and provide the landlords dog sitting services up to a value of \$100.00 per month but non-accumulating. The landlords did not serve the tenant with a Notice of Rent Increase. Nor, was a new tenancy agreement drafted.

I heard consistent testimony from the parties that the tenant fulfilled the new rental payment terms for the months of November 2019 through February 2020 or March 2020; however, the monthly rent obligation returned to \$950.00 starting March 2020 or April 2020. Both parties were of the consistent position that the monthly rent payable by the tenant at the end of the tenancy was \$950.00 per month. The tenant confirmed that she is not seeking return of any overpaid rent by way of this Application for Dispute Resolution.

On February 1, 2020 the rent increase was revisited again and the landlords sought to increase the dog-sitting services to be provided by the tenant to an "as needed" basis to include vacations. The tenant was not agreeable and on February 7, 2020 an Advocate working on behalf of the tenant wrote the landlords a letter informing the landlords that the rent increase did not confirm to the rent increase provisions under the Act. Later that same day the landlords communicated to the tenant that if she could not afford to pay \$1100.00 per month (the sum of a \$950.00 cheque + \$150.00 cash), they would give her three months to move-out of the rental unit and their mother/mother-in-law would move in.

On February 20, 2020 the tenant initiated an Application for Dispute Resolution to dispute the rent increase. On February 27, 2020 the landlords issued a *Two Month*

Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") to the tenant with an effective date of May 31, 2020. The reason for ending the tenancy, as stated on the 2 Month Notice is:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
Please indicate which close family member will occupy the unit.	
<input type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input checked="" type="radio"/>	The father or mother of the landlord or landlord's spouse

The tenant amended her Application for Dispute Resolution on March 3, 2020 to dispute the 2 Month Notice.

On March 14, 2020 the landlords communicated to the tenant, via text message, that if the tenant did not want to move out of the rental unit the landlords terms would be that the tenant pay rent of \$1200.00 per month, by cheque, starting April 1, 2020 for a one year fixed term that would have to be "renewed" each year. The landlord explained that their mother/mother-in-law was in no rush to move in and they could set her up elsewhere when she was ready to move. However, the landlords also went on to state that if the landlords received any more registered mail from "legal aids" they would proceed with ending the tenancy. The tenant did not enter into a new tenancy agreement with the landlords.

On March 18, 2020 a provincial State of Emergency was declared with respect to the Covid-19 pandemic.

On April 10, 2020 the landlord communicated with the tenant, via email, to enquire whether the dispute resolution hearing was proceeding and, if so, that the landlords' son or mother/mother-in-law would be moving into the rental unit once renovations were completed after the tenancy ended.

On April 15, 2020 the landlords communicated to the tenant, via email, that following a family discussion it was decided that it was not a good time "for anyone to move this spring" and the landlords requested the tenant propose new terms of tenancy for a tenancy starting May 1, 2020; however, the landlords also indicated that if the monthly rent remained at \$950.00 the landlords would not do any of the planned renovations, including the deck.

On April 24, 2020 the tenant communicated to the landlords that she would be accepting the “eviction notice” the landlords gave her and would be moved out by May 31, 2020. Further, the tenant would withdraw her Application for Dispute Resolution set for hearing on April 27, 2020. At the hearing of April 27, 2020, the tenant withdrew her Application for Dispute Resolution. The landlords did not appear for the hearing as the landlords, as confirmed to me during this hearing, understood the tenant would be withdrawing the request for cancellation of the 2 Month Notice and would be vacating the rental unit by the effective date of May 31, 2020.

On or about April 27, 2020 the landlords posted an advertisement looking for “long term renters” for the rental unit at the monthly rent of \$1500.00 and contacted the tenant to set up a showing schedule to prospective tenants with a view to securing new tenants for the end of May 2020.

It was undisputed that the tenant vacated the rental unit by May 31, 2020 and the landlords re-rented the unit starting June 1, 2020 for a fixed term of one year at the monthly rent of \$1500.00.

Tenant’s position

In summary, the tenant is of the position the landlords did not have a good faith intention to end the tenancy for landlord’s use of property and the landlords issued the 2 Month Notice after the tenant objected to an unlawful rent increase. After the tenancy ended the landlords re-rented the unit. As such, the tenant is seeking compensation equivalent to 12 months’ rent, or \$11400.00 [calculated as \$950.00 x 12] under section 51(2) of the Act.

The tenant’s materials included a written submission and copies of: the tenancy agreement; 2 Month Notice; numerous email and text message exchanges between the parties; the Advocate’s letter of February 7, 2020; a copy of the decision issued with respect to the April 27, 2020 hearing; a text conversation between the tenant and a neighbour; and, an image of the advertisement for re-rental of the unit.

Landlord’s position

In summary, the landlord takes the position that the landlords had a good faith intention to end the tenancy so that the landlords’ mother/mother-in-law could occupy the rental unit after the tenancy ended. However, the Covid-19 pandemic caused the landlords’ mother/mother-in-law to decide to put her plans to move into the rental unit on hold.

The landlords offered to enter into a new tenancy agreement with the tenant but the tenant declined and the landlords had to mitigate their losses so the landlords proceeded to re-rent the unit. The landlords argued that the Covid-19 pandemic is the extenuating circumstance that prevented their mother/mother-in-law from moving into the rental unit.

The landlords' materials included a written submission and copies of: the tenancy agreement; 2 Month Notice; numerous email and text message exchanges between the parties; the Advocate's letter of February 7, 2020; a sworn affidavit of the landlords' mother/mother-in-law ("the affidavit"); a decision concerning the tenant's application for return of the security deposit; and, several decisions issued by other Arbitrators concerning other tenant's request for compensation under section 51(2) of the Act and findings of extenuating circumstances.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

It is undisputed that on February 27, 2020 the landlords served the tenant with a *Two Month Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act, with an effective date of May 31, 2020; and, the reason for ending the tenancy, as stated on the 2 Month Notice, was so that the landlord's close family member (mother or father of the landlord or the mother or father of the landlord's spouse) may occupy the rental unit after the tenancy ended.

The tenant initially disputed the 2 Month Notice by filing an Amendment to an Application for Dispute Resolution; however, the tenant subsequently communicated to the landlord that she was accepting the end of the tenancy due to the "eviction notice" they served and she subsequently withdrew her request for cancellation of the 2 Month Notice. I do not see evidence to suggest the parties mutually agreed to withdrawal of the 2 Month Notice and continuation of the existing tenancy. Rather, after serving the 2 Month Notice the landlords offered to enter into a new tenancy agreement with the tenant, twice. The first time the landlords suggested the tenant did not have to move if she agreed to pay a monthly rent of \$1200.00 starting April 1, 2020 and when the tenant did not agree to that resolution the landlords suggested the tenant to propose new terms of tenancy for a tenancy to start May 1, 2020; however, the tenant did not propose entering into a new tenancy agreement with the landlords. Since there is no evidence to suggest the parties mutually agreed to withdrawal of the 2 Month Notice

and continuation of the original tenancy and the parties did not enter into a new tenancy agreement, I find the tenancy ended pursuant to the 2 Month Notice.

Section 51 of the Act provides for compensation payable to a tenant where the tenancy has ended by way of a 2 Month Notice served under section 49 of the Act. In this case, the tenant received compensation under section 51(1) by withholding rent for May 2020 and by way of this Application for Dispute Resolution the tenant is seeking the additional compensation payable under section 51(2) of the Act.

Below, I have reproduced sections 51(2) and (3) of the Act:

(2) 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.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, 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.

The landlords had represented to the tenant before and after the 2 Month Notice was served upon her that the landlords' mother/mother-in-law would be moving into the rental unit after the tenancy ends. The landlord also testified during the hearing that it was the intention for the landlord's mother/mother-in-law to move into the rental unit when the 2 Month Notice was issued to the tenant. A landlord's mother/mother-in-law meets the definition of a "close family member" under section 49 of the Act and had the

landlords' mother/mother-in-law moved into the rental unit within a reasonable amount of time after the tenancy ended and for at least six months there would be no compensation payable to the tenant under section 51(2) of the Act. However, it was undisputed that after the tenancy ended on May 31, 2020 the rental unit was re-rented to new tenants, starting June 1, 2020, at the monthly rental rate of \$1500.00 for a fixed term of one year. Accordingly, I find it is undeniable that the landlords did not use the rental unit for the purpose stated on the 2 Month Notice starting within a reasonable amount of time after the tenancy ended and for a period of at least six months.

It is undisputed that after the 2 Month Notice was served the Covid-19 pandemic was declared, along with a provincial State of Emergency. The landlords argued that the Covid-19 pandemic and State of Emergency, including public health orders, caused the landlords' mother/mother in-law to put her plans to move into the rental unit "on hold" and that this amounts to an extenuating circumstance. I proceed to consider the whether the landlords should be excused from paying the tenant the amount required under section 51(2) due to circumstances that are extenuating, in my opinion, as provided under section 51(3).

The Act does not define "extenuating" or "extenuating circumstances" and I turn to the ordinary meaning which includes: *a situation or condition that provides an excuse for an action; tending to lessen the real or apparent seriousness of something (such as a crime, offense, or fault); providing a partial justification or excuse for something.*

Residential Tenancy Branch Policy Guideline 50. *Compensation for Ending a Tenancy* provides information and policy statements with respect to extenuating circumstances, which I have reproduced below:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

In support of the landlords' position that the landlord's mother/mother-in-law put her plans to move into the rental unit on hold due to the Covid-19 pandemic, the landlords pointed to the affidavit of the landlords' mother/mother-in-law. The affidavit includes the following sworn statements:

5. I intended to move [locations removed by me for privacy] in the spring of 2020 but, unfortunately, my moving plans had to be put on hold due to the COVID-19 pandemic.
6. It is still my intention to proceed with my move [locations removed by me for privacy] once the COVID-19 situation has improved and it is safe for me to do so.

The landlords' mother/mother-in-law did not provide a specific reason for deciding not to move during the pandemic in the affidavit other than an implication that it is not safe to do so (as seen in statement #6 above). Nor, was the landlords' mother/mother-in-law called to testify so that she may be further examined with respect to her intentions to move-in to the rental unit before and after issuance of the 2 Month Notice.

I note that in the landlord's email to the tenant on April 15, 2020 the landlord indicates that it is not a good time for anyone to move "this spring" due to the Covid-19 pandemic; yet, in March 2020 and April 2020 the landlord proposed to enter into a one year fixed term tenancy with the tenant, with the option for further renewals; and, in April 2020 the landlords were advertising for "long term renters" and in fact secured replacement tenants for a fixed term of one year. There appears to be an inconsistency between the landlord's statement that "this spring" was not a good time for moving and the landlords' efforts to secure a fixed term tenancy of at least one year at the same time.

Considering the Covid-19 pandemic was in its early stages in March 2020 and April 2020 it is curious to me how the landlords determined it would be unsafe for the

landlord's mother/mother-in-law to not move into the rental unit beyond "this spring" and they did not provide any reasonable rationale for proceeding to try to secure long term tenancy instead.

Also of consideration is that the landlords had proposed increasing the tenant's rent twice in the months prior to issuance of the 2 Month Notice (first in September 2019 and then an attempt to increase it again in February 2020) and after the tenant objected and had an Advocate provide the landlords information concerning lawful rent increases the landlords proceeded to issue the 2 Month Notice to the tenant; and, after she filed to dispute the 2 Month Notice the landlords were open to a new tenancy agreement with the tenant if the tenant would pay a greater amount of rent of \$1200.00.

Overall, I find the landlords' reliance on the Covid-19 pandemic as being the reason their mother/mother-in law did not move into the rental unit and the landlords proceeded to re-rent the unit is based in hindsight and, in my opinion, it is a thinly veiled attempt to conceal their true motivations, which was to raise the rent.

The landlords provided copies of other dispute resolution proceeding decisions whereby other Arbitrators had excused landlords from paying compensation under section 51(2); however, as provided under section 64(2) of the Act, I am not bound by the decisions of other Arbitrators concerning other cases and each dispute resolution decision turns on its own merits. Below, I have reproduced section 64(2):

(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part

In considering all of the above, I am of the opinion that the tenancy was ended so that the landlords may increase the rent, which they accomplished by way of their actions, and I find their pointing to the Covid-19 pandemic is an excuse they are using in hindsight in an attempt to avoid the consequences of ending a tenancy with a bad faith intention and not fulfilling the stated purpose. As such, I do not excuse the landlords from compensating the tenant the compensation payable under section 51(2). Therefore, I grant the tenant's request for compensation in the equivalent of 12 months' rent, or \$11400.00.

In keeping with all of the above, I provide the tenant with a Monetary Order in the amount of \$11400.00 to serve and enforce upon the landlords.

Conclusion

The tenant is provided a Monetary Order in the amount of \$11400.00 as compensation payable under section 51(2) of the Act.

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 23, 2021

Residential Tenancy Branch