



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord attended with his wife, who helped translate in the hearing. The tenants attended with their advocate KD. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on July 1, 2019, with monthly rent set at \$1,200.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$600.00, which was returned at the end of the tenancy. The landlord in this dispute purchased the property, and took possession on October 14, 2020.

It was undisputed by both parties that the tenants had moved out on December 31, 2020, the effective date of the 2 Month Notice served to them by the landlord on October 29, 2020. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: “the rental unit will be occupied by the landlord or the landlord’s spouse or close family member of the landlord or the landlord’s spouse”.

The tenants are seeking compensation as the landlord did not use the home for the purpose indicated on the 2 Month Notice. The landlord confirmed in the hearing that the intention was for them to move into the home, but due to a change in circumstances after the landlord’s mother in law had a bad fall, the landlord made the decision to sell the home instead.

The landlord provided a statement in their evidence that detailed the circumstances behind their decision as well as documentation such as chiropractor receipts and appointment information for the mother in law. The landlord also called a witness in the hearing, SH, who testified that she was called to help with the mother in law, and was employed as a housekeeper at the hospital. In cross examination, SH confirmed that she was not a medical professional, but she had assisted in calming down the mother in law down, and had significant knowledge of the operations of the hospital. The landlord testified that the fall was unforeseen, and changed the circumstances drastically. The landlord testified that there were too many appointments, and the distance of the home was an issue. The landlord testified that they were left with no other option than to sell the home due to the stress and the financial situation. The landlord requests that their circumstances be considered, as well as their intentions at the time the 2 Month Notice was issued to the tenants.

Analysis

Section 51(2) of the *Act* reads in part as follows:

51(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.

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlord had sold the home instead of occupying it. By doing so, the landlord failed to comply with section 49(3) of the *Act*.

Policy Guideline #50 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the *Act*.

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*

I find that the reasons provided for selling the home instead of occupying it are not sufficient to support that there were extenuating circumstances that prevented the landlord from using the rental unit for the stated purpose. Although I am sympathetic towards the fact that the landlord and their family faced unforeseen and significant hardship following the issuance of the 2 Month Notice, I find that the landlord failed to comply with the *Act*. Unfortunately, the reasons provided by the landlord do not meet the definition of extenuating circumstances as contemplated in the *Act* and in Policy Guideline #50. Accordingly, I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance. I issue a monetary award to the tenant in the amount of \$14,400.00.

As the tenants were successful in her claim, I find that they are entitled to recover the filing fee for this application.

Conclusion

I issue a \$14,500.00 Monetary Order in favour of the tenants in compensation for the landlord's failure to comply with section 49(3) of the *Act*, and for recovery of the filing fee for this application.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 17, 2021

Residential Tenancy Branch