



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for a monetary order that is the equivalent to 12 months rent, pursuant to section 51 of the Act, and recovery of the cost of the filing fee.

The tenant and the respondents/purchasers (respondent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The respondents confirmed receiving the tenant's application, which included the evidence. No evidence was filed by the respondents.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to a monetary order pursuant to section 51 of the Act and to recover the cost of the filing fee?

Background and Evidence

The tenancy began on June 1, 2018, with the original landlord. The respondent/purchaser (respondent) purchased the property from the original landlord. The tenant said the tenancy ended in April, 2021, when he vacated the rental unit. The monthly rent at the end of the tenancy was \$1,275. Filed in evidence was a copy of the written tenancy agreement and the latest notice of rent increase.

The rental unit was the upper unit of the residential property.

The Notice was issued to the tenant by the tenant's original landlord, was dated March 15, 2021, and listed an effective date of May 31, 2021. Filed into evidence was a copy of the Notice.

As a reason for ending the tenancy, the Notice listed that all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intend in good faith to occupy the rental unit.

The tenant wrote in their application the following:

my landlord sold the house.I was renting the upper suite and had to move out because new owners didn't want to rent to me.I was supposed to be out by may.31/2021.I left and I have evidence that they have people living in the suite before the 6 month waiting period,I am requesting 12 month compensation for this issue

[Reproduced as written]

In response to the tenant's claim, the respondent proceeded first in the hearing.

The respondent submitted that they occupied the residential property while making a lot of renovations in the residential property in July, August, and September 2021. The

respondent submitted they bought the residential property with the intention that their parents would occupy the whole house. In October, they learned that the brother of one of the respondents lost his job and went into rehab for alcoholism. Their brother had had many stints in rehab prior to that.

The respondent submitted that their parents put their plans of relocating to the residential property, located in another city, on hold, as they wanted to stay in the area to help look after their brother, and to help out their daughter-in-law and granddaughter.

The respondents submitted that their parents spend 5-6 days looking after their son while their daughter-in-law works, and they did not feel right leaving their son at this time.

The respondents submitted that the problems which arose with their brother was unforeseen, resulting in their plans being put on hold.

The respondents confirmed that as of November 15, 2021, the rental unit had been re-rented to other tenants until there is a resolution with their brother and confirmed their parents have never resided in the residential property.

The respondents asserted they stayed in the residential property for three months while doing renovations, getting the residential property ready for their parents. In response to my inquiry, the respondents confirmed never changing their official address to that of the residential property.

Tenants' response –

The tenant asserted that it was never the intention of the respondents or their family to live in the rental unit and his photographic evidence shows that other people reside in the residential property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

The 2 Month Notice was given to the tenant listing that the landlords, as the purchasers, or a close family member intend in good faith to occupy the rental unit.

Section 51(2) provides that if 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 if 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, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

I placed no weight on the respondents' assertion that they stayed in the residential property during the summer of 2021, making renovations, as they stated the intent of the 2 Month Notice was that their parents would occupy the residential property. Apart from that, the respondents failed to assert that they have occupied the rental unit for 6 months after the effective date and never changed their official address to the rental unit.

As the undisputed evidence is that the respondents' parents have never occupied the rental unit and the rental unit has now been re-rented instead, I find the respondents must pay the tenant the amount of \$15,300, the equivalent of 12 times the monthly rent of \$1,275.

Section 51(3) of the Act authorizes the Director to excuse the purchaser from paying the tenants the equivalent of 12 times the monthly rent if, in the Director's opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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.

Tenancy Policy Guideline (Guideline) 50 sets out guidance for establishing a reasonable time. As an example,

“if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the

rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.”

Guideline 50E outlines circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner’s control. Some examples are:

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

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

I find the respondents submitted insufficient evidence of extenuating circumstances. I find the evidence shows that it was the respondents’ parents’ choice to remain where they were living due to issues with their son’s stay in rehab in October 2021. While the respondents claim that this issue was unforeseen, they also said their brother has had multiple issues with alcohol in the past, resulting in rehab stays.

I therefore find the respondents submitted insufficient evidence to show these matters were outside the parties’ control.

Apart from that, by October 2021, the respondents’ parents ought to have already moved into the rental unit, as the effective date of the 2 Month Notice was May 31, 2021, and the Guideline suggests 15 days to be a reasonable time.

As I have found the respondents must pay the tenant compensation equal to 12 times the monthly rent due under the tenancy agreement, or \$1,275, and as I have found

insufficient evidence of extenuating circumstances preventing the respondents' parents from occupying the rental unit, even ten months after the effective date of the Notice, I find the tenant has established a monetary claim of \$15,300.

I find merit with the tenant's application and award him recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

As a result, I grant the tenant a monetary order (Order) of \$15,400, the equivalent of monthly rent of \$1,275 for 12 months, or \$15,300, and the cost of the filing fee of \$100.

Should the respondents fail to pay the tenant this amount without delay, the tenant must serve the Order on the respondents for enforcement purposes by means under section 88 of the Act. The respondents are cautioned that costs of such enforcement are recoverable from the respondents.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent of \$15,300 and recovery of the filing fee is granted. The tenant has been granted a monetary order for \$15,400.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 11, 2022

Residential Tenancy Branch