



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes: MNETC FFT

Introduction

The Tenants seek payment under section 51.1 of the *Residential Tenancy Act* ("Act").

The Tenants seek recovery of the application fee under section 72 of the Act.

Issues

1. Are the Tenants entitled to payment under section 51.1 of the Act?
2. Are the Tenants entitled to recover the cost of the application fee?

Background and Evidence

In this type of administrative proceeding, the applicant must prove their claim on a balance of probabilities (meaning "it is more likely than not to be true"). I have carefully reviewed the parties' submissions and have weighed the evidence but will only refer to the relevant information necessary to explain my decision.

The tenancy began November 23, 2020 and ended on July 30, 2022. Monthly rent was \$2,390 at the time the tenancy ended. There were two tenancy agreements, but the more recent agreement is the relevant one. That agreement included a clause on page 2 requiring the Tenants to vacate on July 30, 2022 because "[the] Landlord's mother plans to live in the rental unit."

The Tenants testified under oath that they agreed to a rent increase of \$200 between the first and second tenancy agreement. Four days after they moved out, they were searching the internet and discovered an advertisement on Craigslist for the rental unit. It was listed for rent at \$3,100. The Tenants felt that the Landlord must have evicted them in order to earn more rent, and they felt betrayed. A copy of the Craigslist ad was submitted into evidence. The Tenants do not know what happened with the rental unit after August 4, 2022.

The Landlord's husband testified under oath that the Tenants agreed to the \$200 rent increase in order to defray rising costs. The Landlord had proposed a \$250 increase, but the Tenants countered with \$200, and this amount was fused into the second tenancy agreement. The Landlord also testified that it was fully their intention to have their elderly parents come and live in the rental unit. This was always their intention, but the pandemic prevented the parents from travelling to Canada earlier as had been hoped.

On August 2, 2022, the Landlord's husband's mother (the individual who was supposed to move into the rental unit) accidentally fell. She suffered a compression fracture on her C1 vertebrae. The Landlord submitted a physician's report. The Landlord testified that, in the mother's doctor's opinion, the mother would not have been able to travel for at least six months.

The mother is 82 years of age and because of her inability to travel due to the injuries, the Landlord was faced with no option but to rent out the rental unit. The Landlord reiterated that they never took advantage of the Tenants, that they never changed their minds about having the parents move to Canada and live in the property. Unfortunately, the unexpected medical emergency changed all this.

Analysis

Are the Tenants entitled to payment under section 51.1 of the Act?

The Tenants seek compensation, under section 51.1(1) of the Act which states that:

Subject to subsection (2) of this section, if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term, 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 date the tenancy ended, to satisfy the prescribed circumstance, or
- (b) the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.

In this dispute, there is no dispute that section 51.1(1) applies. There was a fixed term tenancy agreement requiring the Tenants to move out by July 30, 2022 so that the Landlord's mother could move into and occupy the rental unit. This did not occur.

However, I am required to consider if there were any extenuating circumstances that prevented the Landlord from having their mother occupy the rental unit.

Subsection (2) of the Act states that

The director may excuse the landlord from paying the tenant the amount required under subsection (1) if in the director's opinion extenuating circumstances prevented the landlord from

- (a) satisfying, within a reasonable period after the date the tenancy ended, the prescribed circumstance, or
- (b) using the rental unit in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.

In this dispute, the mother's accidental fall was what I would consider to be extenuating circumstances. And the severity of the injuries—a C1 vertebrae compression fracture no less—was both unexpected and beyond the control of the Landlord.

I thus accept, based on both the affirmed testimony of the Landlord's husband and the supporting documentary medical evidence, that there were extenuating circumstances preventing the Landlord from using the rental unit that satisfied the prescribed circumstance (as set out in the vacate clause on page 2 of the second tenancy agreement) for a period of at least six months. See also section 13.1 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003.

For these reasons the Landlord is excused from paying the Tenants the amount required under subsection 51.1(1) of the Act. The Tenants claim for payment under section 51.1 of the Act is thus dismissed, without leave to reapply.

Are the Tenants entitled to recover the cost of the application fee?

Because the Tenants were not successful their claim to recover the cost of the application fee must also be dismissed, without leave to reapply.

Conclusion

I dismiss the Tenants' application.

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

Dated: April 13, 2023

Residential Tenancy Branch