



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenant applied for dispute resolution (Application) and seeks the following:

- \$10,900.00 in compensation under section 51 of the *Residential Tenancy Act* (the Act) because their tenancy ended due to a Two Month Notice to End Tenancy for Landlord's Use (the Notice) and the purchasers (Purchasers) did not use the rental unit for the stated purpose; and
- to recover the cost of the filing fee under section 72 of the Act

The Purchasers and the Tenant attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

As all parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package and evidence. Based on their testimonies I find that each party was served with these materials as required under sections 88 and 89 of the Act.

Issues to be Decided

1. Is the Tenant entitled to the requested compensation?
2. Is the Tenant entitled to recover the filing fee from the Purchasers?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Tenant seeks compensation of \$10,900.00 which is equivalent to twelve months' rent based on the Purchasers failing to use the rental unit for the stated purpose on the Notice.

The Tenant testified that they and the prior owner of the rental unit entered into a verbal, month-to-month tenancy agreement on July 1, 2015. The tenancy ended on May 31, 2022, per the effective date of the Notice. When the tenancy ended, rent was \$900.00 per month. The rental unit is a basement suite beneath the Purchasers' residence. The Purchasers testified that the details of the tenancy were mostly unknown to them, though they were advised by their realtor that rent was \$800.00 to \$900.00 per month.

The Purchasers entered into a contract of purchase and sale with the prior owner to buy the residential property on March 8, 2022. The Purchasers took possession on May 28, 2022.

On March 31, 2022, the prior owner of the rental unit served the Tenant with a copy of the Notice. It provides an effective date of May 31, 2022. The reason for ending the tenancy is given as "All of 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 intends in good faith to occupy the rental unit."

The Purchasers testified as follows. RO, the mother of Purchaser BO, had suffered from heart and kidney conditions that caused them to retire a few years ago. RO lives in Ontario and had been cared for by her son, CO, who is BO's brother.

The Purchasers described changes in CO's life that meant it was very difficult for them to care for RO alone. The family decided in February 2022 that RO would move to British Columbia and live with BO and their family. The Purchasers hired a realtor in early February 2022 with instructions for them to find a property with a suite for RO that was also close to a hospital, as RO would need to make frequent visits for dialysis.

The residential property, which was one block away from a hospital, was found and an offer to purchase was made on March 7, 2022 which was accepted the next day. The completion date was set to be May 24, 2022.

RO was unexpectedly admitted to hospital in Ontario on March 17, 2022. Prior to this, she had been fit to fly and the plan was for them to join the Purchasers in British Columbia now that a suite for them had been found. RO was not discharged from hospital until May 25, 2022 and was given strict orders not to travel. It was unknown how long it would be before RO would be able to travel again. RO's medical caregivers, including her doctor and her cardiologist have assessed RO periodically to determine if she is able to fly. The Purchasers submitted letters from CO, RO, and RO's cardiologist, along with RO's medical records supporting this. RO is not medically fit to fly according to a letter from her cardiologist dated December 13, 2023, which appears that it should read December 13, 2022. The medical records also indicate that RO was admitted to hospital on June 21, 2022 and was released on July 4, 2022.

The Purchasers called their realtor, AK, as a witness who testified as follows. The rental property was found and deemed to be ideal by the Purchasers as it met their strict requirements to be near a hospital and have a separate suite for B.O.'s mother.

An offer to purchase was made on March 7, 2022 and it was accepted on March 8, 2022. The previous owners' realtor was made aware that the basement suite needed to be vacant as RO planned to come and live there. The previous owners' realtor said that this would not be an issue as the Tenant planned on moving out, but they were told the Notice would have to be issued to ensure the basement was vacant. AK then prepared the written authority for the previous owners to serve the Notice, and it was signed by the Purchasers on March 22, 2022.

They never spoke of increasing the rent with the Tenant. AK stated they were told by the Purchasers throughout the process of buying the property that the plan was for RO to live in the rental unit.

The Tenant testified as follows. They had wanted to stay in the rental unit long-term and when the previous owners decided to sell the property, they had wanted to find a buyer that would allow the Tenant to continue to live in the basement suite. The Tenant acknowledged this may have affected the offer price for the rental property.

On March 8, 2022, the Tenant found out that an offer for the rental property had been accepted and that the buyers wanted occupancy of the rental unit. The Tenant wanted an official Two Month Notice and the Notice was delivered in person to them on March 31, 2022.

The Tenant found a new place to rent and signed the tenancy agreement on April 16, 2022. They moved out of the rental unit on May 14, 2022 and gave the keys to the Purchasers on May 31, 2022. When handing the keys over, they were told that RO was still planning on moving in by Purchaser CS. They were also asked by a friend of RO's why they did not stay in the rental unit and RO said it was because they did not pay enough rent.

The Tenant noticed the rental unit was advertised online to rent on June 16, 2022.

In response to the Tenant's testimony, RO denied the Purchasers issued the Notice because the Tenant did not pay enough rent. They testified they told the Tenant that their mother was moving in, and they were waiting for medical clearance.

I asked if the Purchasers had considered allowing the Tenant to continue the tenancy when they found out RO could not travel on May 25, 2022. The Purchasers testified that they did ask their realtor about this possibility, and they had been told that the Tenant had already moved out. Also, when they took occupancy of the rental property on May 28, 2022, the rental unit was vacant. When RO initially had to be admitted to hospital on March 17, 2022, neither the Purchasers or RO's medical staff knew it would be such a long time before they were released. When RO was finally released, it was not known how long it would be before they were cleared for travel again.

I asked the Purchasers if they had considered occupying the rental unit themselves while they waited for RO to be cleared to travel, rather than rent it out. The Purchasers testified that there were plans for RO to contribute financially so the mortgage could be paid. Without the financial contributions of RO they would be under financial hardship. They took on a tenant in July on a month-to-month basis.

Analysis

Section 49(5) of the Act states that a landlord may end a tenancy if they have entered into an agreement to sell the rental unit, all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord in writing to give notice to end

tenancy to the tenant on the grounds that the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

Section 51(2) of the Act says that if the stated purpose on the notice to end tenancy is not accomplished within a reasonable amount of time and for a duration of at least 6 months from the effective date of the notice to end tenancy, the purchaser must pay the tenant twelve months' rent compensation. However, section 51(3) of the Act states that an arbitrator may excuse the purchaser from paying twelve months' rent compensation to the tenant if, in the arbitrator's opinion, extenuating circumstances prevented the stated purpose on the notice to end tenancy from being accomplished.

In this case, the Purchasers did not dispute that the stated purpose on the Notice was never accomplished as they testified RO, Purchaser BO's mother, never occupied the rental unit as planned. Therefore, I must decide if the reasons put forward by the Purchasers as to why RO did not occupy the rental unit to be valid extenuating circumstances.

Policy Guideline 50 on Compensation for Ending a Tenancy defines extenuating circumstances as 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. The Purchasers have the burden of proving, on the balance of probabilities, that they are excused from paying compensation to the Tenant on the basis that extenuating circumstances prevented the stated purpose on the Notice from being accomplished.

Having considered the testimony of the Purchasers and their documentary evidence, I find that when the property was purchased and the Notice was issued, the only plan they had for the rental unit was for RO to occupy it. In arriving at this conclusion, I give significant weight to the specific requirements given by the Purchasers when searching for a new property, particularly the strict need for the property to be very near a hospital, as put forward in the detailed and convincing testimony of AK, the Purchasers' realtor.

The Purchasers stated RO did not occupy the rental unit as they were not able to travel from Ontario to British Columbia due to health complications. I have considered the testimony and the medical evidence submitted by the Purchasers and find that, on the balance of probabilities, this is a valid reason for RO not occupying the rental unit. I find that the medical evidence shows a significant hospital stay from March 17, 2022 to May

25, 2022 and the letter from RO's cardiologist verified that they are unable to fly until their health has stabilized. As RO was admitted to hospital again in June 2022 and has yet to be cleared to fly, this further indicates to me the severity of their condition and further reason to accept RO's health issues as a reason for not occupying the rental unit.

For me to consider the reason for RO not occupying the rental unit as an extenuating circumstance, as well as the reason being in and of itself valid, I must also be satisfied that the situation was both beyond the reasonable control of the Purchasers and could not have been anticipated. A completely valid circumstance, if within the control of the party relying on it, or one that could have been anticipated, would not be an extenuating circumstance as the Purchasers could have planned accordingly.

RO's health was not within the Purchasers' control. As such, I must only consider whether RO's inability to fly was something the purchasers could have reasonably anticipated.

I find the timeline of events important to note here. The offer to purchase the rental unit was made on March 7, 2022 and accepted March 8, 2022. RO was admitted to hospital on March 17, 2022 and I accept that it would not have been known at this point how long they would have to stay in hospital for, or what their condition or ability to travel would be like when they were released.

The Purchasers gave the prior owner the authority to issue the Notice on March 22, 2022 and the Notice was served on March 31, 2022. RO was released from hospital on May 25, 2022 and was told they could not fly. I find, on the balance of probabilities, that this was the point at which the Purchasers knew RO would not be able to occupy the rental unit within a reasonable amount of time. The Purchasers' testimony indicated to me that before RO was admitted to hospital on March 17, 2022 she had been able to travel and that this admission to hospital was unexpected. I clarified this point with BO during the hearing. Before the admission to hospital, RO had lived at home with care provided by CO. There was nothing put forward in the testimony or medical evidence that indicated to me that RO was ordered not to travel, or that she was going to be ordered not to travel, prior to May 25, 2022. Therefore, I find that on the balance of probabilities, that the Purchasers could not have anticipated RO's decline in health when the Notice was issued and therefore find it an extenuating circumstance under section 51(3) of the Act. Given this, the Purchasers are excused from compensating the Tenant under section 51(2) of the Act.

Additionally, when the Purchasers knew of RO's inability to travel on May 25, 2022, the effective date of the Notice, May 31, 2022, was just a few days away. The Purchasers testified that they considered seeing if the Tenant would stay on in the rental unit and extend the tenancy, though they were told the Tenant had already vacated the rental unit. Given that the Tenant testified they moved out of the rental unit on May 14, 2022, I accept the Purchasers testimony to be credible in this regard and find that amending the effective date of the Notice at this stage would not have been a viable option.

Given the above, the Application is dismissed without leave to reapply.

As the Tenant's Application was not successful, they must bear the cost of the filing fee.

Conclusion

The Application is dismissed.

The Purchasers are excused from compensating the Tenant.

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: May 24, 2023

Residential Tenancy Branch