



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT

Introduction

Both parties and witnesses attended the hearing and gave sworn testimony. The tenant provided evidence that they served the landlord with the Application for Dispute Resolution and evidence by registered mail and the landlord agreed they had received it. The tenant said she had received the landlord's evidence. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to compensate the tenant with twelve times the monthly rent pursuant to sections 49 and 51 as the landlord did not use the unit according to their stated purpose.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord did not use the unit for the stated purpose in the section 49 Notice and they are entitled to twelve times the monthly rent pursuant to section 51 of the Act?

Background and Evidence

Both parties and witnesses attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said she was told in May 2018 that her landlord was putting his house up for sale. When she returned from out of town on May 30, 2018, she received a two month Notice to End Tenancy for "All of the conditions of 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". She asked for an extension to August 31, 2018 but the landlord (seller) told her it was not possible as a mother of the purchaser was moving in.

In August 2018, she saw the unit advertised for \$1700 a month. The purchaser questioned this date and the tenant said she may have been mistaken because she was coming back from out of town in August 2018. The purchaser said it was advertised September 9, 2018 and his wife confirmed this. The tenant asks for 12 months compensation pursuant to section 51.2 of the Act for the purchaser did not use the unit according to their stated intention. Her tenancy began 3 or 4 years ago and her current rent was \$1088 a month with a security deposit of \$550. She confirmed the security deposit was refunded.

The purchaser said he could not extend the tenancy to August 31, 2018 as the home was still in possession of the seller. The seller said he could not extend the tenancy for the closing date was August 29, before the end of the month. The tenant did not ask for an extension to the middle of August, for example.

The landlord said they had two children and were expecting a third so needed a bigger home. His wife said she and her mother and children have a close relationship and her mother agreed it would be a good plan for her to live with them and help with the children if they could find a home that would suit her too. They shopped together for a suitable home where the suite would satisfy her mother and put in an offer in May 2018 on this home which seemed very suitable for their plans. After they had the accepted offer, the mother suffered heart problems. She said, she had had a bypass in 2009 and was doing well but began to suffer angina, irregular beating and shortness of breath. In addition, she got a bladder and kidney infection in June that still has not resolved although she has had many courses of antibiotics. When her doctor heard of her plans to move in and help her daughter, the doctor said she was not in a position to help with 3 children. The stress and lifting would put too much strain on her heart. When she tries to lift anything, she gets very overtired and short of breath. Her doctor's letter is provided as evidence.

The landlord said when they found out it was impossible for the mother to participate in their plans, they had to advertise to rent the unit as they could not afford other childcare; the mother confirmed she was going to pay rent of \$1088 a month and give free help.

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Analysis:

The *Residential Tenancy Act* provides: *Tenant's compensation: section 49 notice*

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of

the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement...

(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.

Policy Guideline 50 clarifies extenuating circumstances: It states:

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

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Some examples are:

A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.

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A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

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The following are probably not extenuating circumstances:

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A landlord ends a tenancy to occupy a rental unit and they change their mind.

I find the facts in this case show extenuating circumstances which would excuse the landlord from paying compensation. I find the landlord's evidence credible that they had the full intention of having the wife's mother live in the suite and help with the children and the expected new child. This credibility is supported by the wife and mother shopping together for a new home that had a suitable suite for the mother.

I find the landlord could not accomplish the stated purpose due to the mother's deteriorating health conditions. I find this was not just a change of mind but a doctor's advice that she could not move to her daughter's home and take on the responsibility. The mother's credibility is supported by her doctor's letter in evidence and by her oral description of her health problems (which the doctor did not detail due to confidentiality requirements). I find the weight of the evidence is that there were significant extenuating circumstances which stopped this landlord from accomplishing the stated purpose on the Notice to End Tenancy. Therefore I find the landlord should be excused from payment of compensation as it would be unreasonable and unjust in these circumstances.

I find the seller who attended the hearing acted legally in every respect and is not liable for any claims by the tenant.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply. The filing fee was waived.

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: January 08, 2019

Residential Tenancy Branch