



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary award pursuant to sections 51(2) and 67 of the *Act* for losses arising out of this tenancy and for the landlord's failure to use the rental unit for the purposes stated in the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) issued to the tenant on September 16, 2019, and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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.

As the landlord's agent, the landlord's spouse (the agent) confirmed that on May 17, 2019, the landlord received a copy of the tenant's dispute resolution hearing package sent by the tenant's legal counsel by registered mail on May 15, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award pursuant to section 51(2) of the *Act* for the landlord's failure to use the rental unit for the purposes stated on the 2 Month Notice?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy for a small lower level studio rental suite began in July 2012. The current landlord purchased this property in April 2018, and resides in the upper level of this two unit dwelling. Monthly rent by the end of this tenancy was set at \$720.00, payable in advance on the first of each month. Although the tenant paid a security deposit, that deposit was returned to the tenant when this tenancy ended on or about November 30, 2018.

On September 16, 2019, the landlord issued the 2 Month Notice to the tenant requesting an end to this tenancy by November 30, 2018 for the following reason stated on that Notice:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

At that time, the tenant said they were told by the landlord that the landlord's 81 year old father had recently been diagnosed with cancer and that the rental unit was needed by the landlord so that the landlord and their spouse (the agent at this hearing) could take better care of them. At the hearing, the agent testified that the plan had always been to have the landlord's father and mother reside in the tenant's rental unit as this would be much closer for them to assist with the medical appointments the landlord's father needed and for other ongoing appointments. The landlord's father and mother currently reside in another community about an hour's drive away from the landlord and another family member who drives them to appointments.

The tenant vacated the rental unit in accordance with the November 30, 2018 effective date of the 2 Month Notice.

The tenant's application for a monetary award of \$8,640.00 was for the landlord's failure to move a close family member into the rental unit within a reasonable period of time following the end of this tenancy.

The agent did not dispute the tenant's assertion that no close family member moved into this rental unit. The agent provided extensive written evidence to support their contention that extenuating circumstances arose after the landlord issued the 2 Month Notice that rendered it impractical and inadvisable for the landlord's father (and mother)

to move into the rental unit. Initial surgery showed that the landlord's father did not actually have cancer; however, a November 15, 2018 medical report diagnosed the landlord's father with Parkinson's disease, which was affecting the mobility of the landlord's father. While the agent said that the landlord's family knew that the landlord's father was experiencing mobility issues, as he stayed in a reclining bed much of the day, the agent said that the mobility of the landlord's father deteriorated quickly since the landlord's father received the diagnosis in November 2018. After exploring options for assistive devices, the agent said that the landlord's family decided that the best option for the long term prospects for the landlord's father and their mother was to remain in their existing home where they had lived a number of years. The agent provided written evidence regarding a program that may assist the landlord's family in making renovations to the home of the landlord's father that will enable him to remain on the same level of their house without having to cope with stairs.

The agent maintained that the deteriorating mobility of the landlord's father, only diagnosed in November 2018 as Parkinson's disease, constituted the extenuating circumstance that allows the landlord to avoid using the premises for the purposes stated in the 2 Month Notice. The agent entered into written evidence statements from health care professionals, and those associated with recommendations for the use of various assistive devices to improve the ability of the landlord's father with his mobility. After a fairly lengthy process, the agent said that the family met in March 2019, and decided that any move of the landlord's father from their long established home would be only a temporary solution as other measures would need to be taken as their mobility was deteriorating quickly. The agent maintained that the rental unit, which the landlord believed would be suitable when the 2 Month Notice was issued, was no longer suitable by March 2019, when the family met to decide how best to proceed with this changing set of circumstances. Of particular concern to the landlord's family were the two steps leading to the elevated bedroom area and three steps near the front of this rental suite.

The agent maintained that they renovated the rental suite at the request of the landlord's mother and that these renovations were planned to take place in March 2019 to accommodate the work schedule of the contractor they were retaining for this work. They said that the work became further delayed and did not get completed until early May 2019. By that time, as the landlord's father and mother were no longer planning to move into the studio suite, the landlord advertised the availability of the suite to prospective tenants. The agent said that someone rented the premises in May 2019 to take possession on June 1, 2019. The agent said that the new tenant is paying \$1,250.00 in monthly rent for the tenant's former suite in its renovated state.

Analysis

Section 51(2) and (3) of the Act read 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... 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...

With respect to the interpretation of a reasonable period of time, the term used in paragraph 51(3)(a) of the Act, RTB Policy Guideline #50 reads in part as follows:

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days. If a landlord ends a tenancy to renovate or repair a rental unit, then they should start taking steps to renovate or repair the unit immediately after the tenancy ends. However, there may be circumstances that

prevent a landlord from doing so. For example, there may be a shortage of materials or labour resulting in construction delays. ..

...Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months. This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy...

As was noted by the tenant's counsel, Policy Guideline #50 also provides the following guidance for Arbitrators in determining whether extenuating circumstances are in existence which would enable a landlord to avoid becoming responsible for the monetary award allowed a tenant if the landlord does not use the premises for the purposes stated in the 2 Month Notice.

...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...*

In this case, there is undisputed evidence that a close family member as defined pursuant to the Act did not move into the rental unit, the reason the landlord cited in the

2 Month Notice for ending this tenancy by November 30, 2018. While the tenant's application for a monetary award equivalent to 12 months rent was primarily focussed on the undisputed claim that the landlord's father never moved into the rental unit, at the hearing, the agent also confirmed that the renovations that the landlord's mother was seeking were not even completed until early May 2019. Thus, even if the landlord's father (and mother) had moved into the rental unit when it became ready for occupation for June 2019, there was a significant delay in this happening. This might also be sufficient to allow the tenant's application for the landlord's failure to accomplish the stated purpose for ending the tenancy within a reasonable period of time after the effective date of the notice, November 30, 2018.

Based on the wording of Policy Guideline #50, extenuating circumstances are very much the exception. An admitted failure to use the rental unit for the purpose stated in the 2 Month Notice within a fairly short time frame would normally be sufficient for a tenant to become eligible for a monetary award pursuant to section 51(2) of the *Act*.

While I have given the agent's evidence careful consideration, there is also evidence that the landlord's 81 year-old father was already experiencing significant mobility issues, requiring a range of measures to assist with their mobility when the 2 Month Notice was issued. The landlord's mother was also elderly and of little assistance in helping the landlord's father by that time, as a result of physical limitations of their own. The physical layout of this small rental unit did not change between the time when the landlord issued the 2 Month Notice and when a decision was made to explore the availability of programs that would assist the landlord's father with mobility within his own home and not the rental unit.

The agent provided no written statements from any other family members, nor did anyone else attend this hearing to provide sworn testimony in opposition to the tenant's application. The agent did not supply any evidence with respect to steps that had been taken by the landlord's father and mother to either sell their existing residence, rent it out to someone else, or let another family member live there. In fact, there is no direct evidence, other than the agent's sworn testimony and written evidence that the landlord's father and mother ever had any intention of moving into the lower level studio rental unit underneath the landlord's own home where the tenant had been residing.

Although the agent provided impassioned testimony as to the extent to which their family had been impacted by the deterioration of the health of the landlord's father and the shock that the landlord received upon receipt of the tenant's application, the agent

expressed little consideration for the impact that the landlord's issuance of the 2 Month Notice to the tenant had upon the tenant's circumstances. In this regard, the agent stated that they had not given any thought whatsoever to the tenant's situation after the landlord had issued the 2 Month Notice. They testified that they were in shock that the tenant had decided many months after this tenancy had ended to initiate a claim against the landlord. While I can understand that the landlord's family was primarily preoccupied by the health of the landlord's father and with the best living arrangements that could be made for the landlord's father and mother, this preoccupation with their own family dynamics and what was best for the landlord's father and mother does not lessen the landlord's responsibility to follow through with the reasons stated in the 2 Month Notice for ending this tenancy.

At the hearing, the tenant questioned why the landlord had not advised the tenant that they no longer needed the rental unit for the landlord's father once the landlord and their family received the medical diagnosis in November 2018 that the landlord's father had Parkinson's disease. At that time, the tenant said that they still may have been able to remain in the rental unit, as the effective date of the 2 Month Notice did not require them to vacate until November 30, 2018.

The disregard and lack of urgency that the landlord demonstrated after this tenancy ended was also evident in the agent's explanation as to why the landlord took so long to initiate the repairs and renovations that were originally supposed to have been requested by the landlord's mother. Although the landlord issued the 2 Month Notice in mid-September, the agent said that they had no real intention to commence the renovations requested by the landlord's mother until after Chinese New Years, and after the workload of their tradespeople subsided in March 2019. As was correctly noted by the tenant's legal counsel, there appears to have been a four month delay in the landlord even planning to commence the renovations required to set the stage for the use of the property for the purpose stated in the 2 Month Notice. As the tenant's legal counsel noted, the landlords did not seek out other contractors who might be able to start this work before March 2019. The agent testified that the work performed was not substantial and only took their contractor a week or two to complete once they actually began this work. While the agent asked that this testimony be considered as proof that the landlord was in no rush to renovate the rental unit for rent to someone else, I find that this testimony also supports the tenant's assertion that the landlord paid little attention to the requirements of the *Act* after they issued the 2 Month Notice.

The landlord's father has remained in their existing family home with their spouse from the time the landlord issued the 2 Month Notice until the date of this hearing. The agent presented evidence to support their claim that the landlord's father who was supposed to move into this rental unit received a fresh medical diagnosis of Parkinson's disease after the landlord issued the 2 Month Notice. However, I note that the size of the rental unit, the number of steps involved in this small studio apartment and the mobility challenges faced by the landlord's father were all well known to the landlord at the time that the landlord issued the 2 Month Notice. Although I accept that the new medical diagnosis in November 2018 changed the perspective that the family had with respect to the mobility challenges faced by the landlord's father, the evidence presented by the landlord demonstrates that measures taken to obtain assistance for assisted living have been focused on keeping the landlord's father in the existing home where they have lived with their spouse for many years. It would seem that almost all of the recent efforts taken since the March 2019 family decision that the rental suite was unsuitable for a long term solution for their parents has been directed at making the structural changes and modifications that would allow this elderly couple to remain in their existing home. While this may very well be the best solution for the family and the landlord's father and mother, this is at direct odds with the reasons stated on the 2 Month Notice, which evicted the tenant so that the landlord's father, and according to the agent, the landlord's mother could reside in this rental unit.

Although the motives of the landlord and their family may very well have been genuine as the agent claimed. Their changed decision with respect to deciding that the rental unit was not the correct residential option for the landlord's father and mother may also be genuine; however, I find the actual sequence of events is more supportive of the tenant's assertion regarding what has transpired. The landlord's mother and father have remained in their existing home in another community. The landlord did not even plan to commence renovations until four months after this tenancy ended. These renovations were not completed until more than six months had elapsed since the end of this tenancy. Plans made to obtain funding for alterations to the structure to accommodate the deteriorating mobility of the landlord's father were drafted for the existing home where they have been living for years and not the rental unit. There is little evidence from the agent that the landlord considered the options that the tenant's counsel cited during the hearing as being possible, such as the construction of handrails, the repositioning of the reclining bed where the landlord's father spends much of the day and a redesign of the bathroom. Within a few weeks of completing the renovations, the landlord listed the renovated rental suite for rental, and obtained a tenant(s) who is paying a monthly rent of \$1,250.00, as of June 2019, over \$500.00

more than the \$720.00 the tenant was paying. This marked increase in monthly rent was obtained little more than a year after the landlord purchased this property in April 2018.

Based on a balance of probabilities, I find that the landlord's agent has not supplied sufficient evidence that would demonstrate that there were extenuating circumstances that prevented the landlord from using the rental unit for the purposes stated on the 2 Month Notice. While the landlord's father does appear to have received a new diagnosis with respect to their mobility and mobility may very well have decreased since the 2 Month Notice was issued, I find little evidence to support the agent's claim that this deterioration in the condition of the landlord's father's condition had any real impact on the landlord's plans for this rental unit. Rather, I find that the landlord issued the 2 Month Notice six months after buying this property and proceeded to renovate the rental unit at their own pace, many months after the tenant was forced to vacate the rental unit. The landlord then advertised the availability of this very small studio rental unit where the landlord claimed the landlord's father and mother were planning to reside shortly after the renovations were completed. The landlord then successfully rented the premises to someone else who is paying over \$500.00 more in monthly rent than the landlord was obtaining from the tenant.

Under these circumstances, I allow the tenant's application for a monetary award equivalent to 12 months rent at the rate of the \$720.00 monthly rent the tenant was paying the landlord before this tenancy ended. This results in a monetary award of \$8,640.00, pursuant to section 51(2) of the *Act*.

As the tenant has been successful in this application, I find that the tenant is also allowed to recover their \$100.00 filing fee from the landlord.

Conclusion

I allow the tenant's application and issue a monetary award under the following terms in the tenant's favour for an award pursuant to section 51(2) of the *Act* and for the recovery of their filing fee from the landlord.

Item	Amount
Award Equivalent to 12 Month's Rent (\$720.00 x 12 months = \$8,640.00)	\$8,640.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$8,740.00

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This final and binding 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 18, 2019

Residential Tenancy Branch