



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

FFT, MNDCT

Introduction

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

- a monetary order for compensation in the amount of 12 times the monthly rent payable under the tenancy agreement pursuant to section 51 for the landlord's alleged failure to comply with stated purpose on landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"); and,
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant, N.D. appeared on her own behalf. M.S. appeared as a representative on behalf of respondent, D.P. Respondent N.E. appeared on her own behalf and on behalf of respondent T.E. All parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

Since all of the parties attended the hearing and submitted evidence for the hearing, I find that the parties were both sufficiently served pursuant to section 71(2)(c) of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent payable under the tenancy agreement pursuant to section 51 for the landlord's alleged failure to comply with stated purpose on landlord's Two Month Notice?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenant testified that the monthly rent was \$1,757.00. She testified that respondent D.P. was named as the landlord on the tenancy agreement. Respondent D.P. testified that they are a

property management company and they were only acting as the agents of the owners, respondents N.E. and T.E.

The tenant testified that she received a notice of entry for February 1, 2019 from the respondents to show the rental unit to real estate agents.

On February 15, 2019, the respondents sent the Two Month Notice seeking to end the tenancy as of April 30, 2019. The stated purpose on the Two Month Notice was so that the landlord's close family could move into the rental unit. After receiving the notice, the tenant was advised by the property management company that the owners had originally considered selling the rental unit but they changed their mind and they decide to have their daughter occupy the rental unit instead.

The tenant testified that she moved out of the rental unit early on April 1, 2019. The tenant testified that she discovered in June that the landlord's family did not move into the rental unit and the rental unit was being sold.

Respondent, N.E. testified that their intention was that their daughter would move into the rental unit after she graduated college at the end of April 2019. She testified that their daughter would occupy the rental unit and make the mortgage payments until the property could later be transferred to her. The respondent, N.E. testified however that their plans changed.

Respondent, N.E. testified that their daughter was unexpectedly unable to find a job after graduating. In addition, the respondent N.E. testified that they were financially unable to afford to keep the property without payments from their daughter. Further, the respondent N.E. that their finances were strained additionally because they had to give the tenant one month of free rent pursuant to the Act and the tenant moved out a month earlier. The respondent, N.E. testified that, in these circumstances, they were unable to afford to keep the property and it was listed for sale on May 2, 2019. She testified that the property was sold in June 2019.

Analysis

The tenant is seeking compensation under section 51 of the *Act*, which states in part, as follows:

51(2) ..., if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord ... must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 6.6 state that the applicant, in this case the tenant, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the tenants to prove that, more likely than not, the facts occurred as claimed in order to prevail in their claim.

Furthermore, the tenant has filed this application for compensation against both the owners of the rental unit, respondent N.E and T.E. and against the property management company, D.P. The Act defines a "landlord" as both the owner of the rental unit and the owner's agent. Based upon the undisputed testimony of both N.E and M.S, I find that D.P. was acting as the owners' agent. Accordingly, I find that all of the respondent of N.E., T.E. and D.P. are landlords in this matter pursuant to the *Act*.

I find that the effective date of the Two Month Notice was April 30, 2019 and that the stated reason for the Two Month Notice was so that the landlord, or the landlord's close family, could occupy the rental unit pursuant to section 49(3) of the *Act*.

Accordingly, the tenants can establish a claim for compensation under section 51(2) of the *Act* if the tenant can prove that the landlords, or the landlord's close family, did not occupy the rental unit for six months after the effective date of the notice. Based on the agreed testimony of the parties, I find that the neither the landlords or the landlord's close family has occupied the rental unit at all after the issuance of the notice to end tenancy. Accordingly, I find that the tenant has sufficiently established for compensation pursuant to section 51(2) of the *Act*.

However, even though the tenants have established a claim under section 51(2), we must also consider section 51(3) of the *Act* gives an arbitrator the discretion to excuse the landlord's conduct. Specifically, section 51(3) states the following:

51 ...

- (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.

Residential Tenancy Branch Policy Guideline No. 50 explains extenuating circumstances as follows:

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 matter, the landlord N.E. argued that extenuating circumstances existed because their daughter was unable to obtain a job after graduating. Furthermore, the landlord N.E. argued that extenuating circumstances existed because the tenant moved out one month early.

However, I do not find that these are extenuating circumstances pursuant to the Act. I find that the landlords have not provided sufficient evidence to establish that it was unforeseeable that their daughter would be unable to find a job after graduating college. Furthermore, I find that it not unforeseeable that the tenant may vacate the rental unit early after receiving a notice to end the tenancy.

In addition, I did not find the testimony of landlord N.E. to be credible. She testified that the February 1, 2019 real estate agent visit was arranged so that they could appraise the rental unit so that their daughter could take over the payments and then the property could be transferred to their daughter later. I found this testimony to be not credible because the landlord N.E. did not provide a sufficient explanation as to why an appraisal was needed in order for their daughter to assume the mortgage payments. In addition, the landlord N.E. did not provide any documentation to corroborate this testimony.

On the other hand, the tenant produced an email from respondent D.P. dated February 19, 2019 which stated that the owners did previously have an intention to sell the property but they changed their mind because the listing price was too low. In addition, I find that the credibility of the landlord N.E.'s testimony was diminished by the timing of the owners' decision to market the property only two days after the date of the effective end of the tenancy. Based on these circumstances, I find the landlord N.E.'s testimony to be unreliable and I find that the respondents N.E. and T.E. have not established the existence of extenuating circumstances.

For the forgoing reasons, I find that the tenant is entitled to a monetary award for compensation pursuant to section 51 of the Act. I find that the monthly rent was \$1,757.00 and that the tenant is entitled to a monetary award of \$21,084.00 (12 times \$1,747.00).

In regards to respondent D.P., I find that extenuating circumstances do exist in regards to this respondent. Based upon the undisputed testimony of respondent D.P., which was confirmed by landlord N.E., I find that respondent D.P. was only acting as the agent of the landlord and respondent was acting under the direction of the owners when the notice to end tenancy was issued. As such, I find that this agency relationship is an extenuating circumstance pursuant to section 51 and it would be unreasonable and unjust for respondent D.P. to be required to pay compensation for actions requested by their principal.

Accordingly, I exercise my discretion under section 51(3) of the *Act* to excuse the conduct of respondent D.P. and I dismiss the tenants' application for monetary compensation against respondent D.P.

Since the tenant has been successful this matter against respondents N.E. and T.E., I award the tenants \$100.00 for recovery of the filing fee against these respondents.

The total award to tenants is accordingly \$21,184.00 against respondents N.E. and T.E. only as set forth below:

Item	Amount
Compensation pursuant to section 51 (\$1,757.00 times 12)	\$21,084.00
Filing recovered by tenant	\$100.00
Total award to tenant against respondents, N.E. and T.E.	\$21,184.00

Conclusion

I grant the tenants a monetary order in the amount of **\$21,184.00** against respondents N.E. and T.E. only. If respondents N.E. and T.E. fail to comply with this order, the tenant may file the order in the Provincial Court to be enforced as an order of that court.

The tenant's application against respondent D.P. is dismissed.

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: October 30, 2019

Residential Tenancy Branch