



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On June 11, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with J.C. attending as an agent for the Landlord. All parties provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord by registered mail on June 18, 2019 and the Landlord confirmed that this package was received. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

J.C. advised that the Landlord’s evidence was served to the Tenant by registered mail on September 9, 2019 and the Tenant acknowledged that he received this evidence on September 13, 2019. This evidence was served within the timeframe requirements in accordance with Rule 3.15 of the Rules of Procedure. As such, I am satisfied that the Tenant was sufficiently served with the Landlord’s evidence, and this evidence was accepted and considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 15, 2017 and the tenancy ended when the Tenant gave up vacant possession of the rental unit on August 23, 2018. Rent was established at \$1,500.00 per month and was due on the first day of each month. A security deposit of \$750.00 was also paid.

All parties agreed that the Tenant was served with the Notice on June 22, 2018. The reason the Landlord checked off on the Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The Landlord indicated on the Notice that the effective end date of the tenancy was August 31, 2018.

The Tenant advised that he was not planning to move as he had established a family and made the rental unit his home. He stated that the Landlord had attempted to sell the rental unit multiple times during the tenancy but was unsuccessful. While he accepted the Notice, it was difficult to find a new place to rent. Approximately two to three weeks after he vacated the rental unit, he received a call from the property manager who advised him that the Landlord was supposed to move in but decided against it and would be re-renting it instead. Upon finding this out, the Tenant stated that he would be exercising his rights under the *Act*, so the property manager then refused to re-list the rental unit. The Tenant stated that the Landlord fired this property manager and then hired a new property management company that would re-rent it. He submitted two advertisements, as documentary evidence, that prove the rental unit was listed for rent on February 2, 2019. He advised that the Landlord never did move into the rental unit. As such, his position is that he is owed compensation in the amount equivalent to twelve months' rent (**\$18,000.00**) pursuant to Section 51(2) of the *Act* as the Landlord

did not use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

J.C. advised that it was the Landlord's honest intention to move into the rental unit because the place the Landlord was currently living in was too hot, his wife had passed away, and he wanted to make a change. He submitted that the Landlord wished to move from his current residence and into the rental unit until October 2019. Then, he would move again when his new condo would be finished. He advised that the Landlord suffers from anxiety and he referenced the doctor's notes provided as documentary evidence to support this position. J.C. stated that once the Landlord was advised by the property manager that he might be sued by the Tenant if he did not move into the rental unit, his anxiety increased to the point that rendered him unable to move. He advised that this is further corroborated by the doctor's note dated August 26, 2019. It is J.C.'s position that moving is a heavy burden as it is and on top of this, the Landlord's elevated anxiety from potentially being sued, if he did not move into the rental unit, constituted an extenuating circumstance that prevented the Landlord from moving, pursuant to Section 51(3). J.C. stated that the Landlord could not move into the rental unit by the "deadline" of six months from the effective date of the Notice.

The Landlord confirmed that it was his intention to move into the rental unit as the place he was currently living in was too hot in the summertime and as a result, he could not sleep. He advised that he did not move into the rental unit after the effective date of the Notice as he could not sell the place he was currently living in. Then, he stated that on September 17, 2018, he was informed that he would be sued if he did not move into the rental unit, and he submitted that the anxiety that this caused him rendered him incapable of moving. However, contrary to J.C.'s submissions, the Landlord advised that he did not suffer from any anxiety prior to this date and that his anxiety developed after September 17, 2018.

Regardless, due to his health problems, he was unable to move into the rental unit after the effective date of the Notice and he looked for another place to move. This new place was not ready yet, so he continued to live where he is until he can move to the new unit. He stated that his plan was to move into the rental unit and then move into his new place later.

The Landlord stated that he never asked the previous property manager to re-rent the rental unit, but he did acknowledge that he wanted to change property managers. He

confirmed that he hired a new property manager in February 2019 to advertise the rental unit to be re-rented.

The Tenant reiterated that the Landlord's submissions do not make any sense as he was contacted by the previous management company in mid-September 2018 about the unit being re-rented and the Landlord admitted that his anxiety only started on September 17, 2018, after realizing that the Tenant would exercise his rights under the Act. He stated that the Landlord was always planning to move to his new residence, he never planned to move into the rental unit, and his plan was to re-rent the rental unit all along.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. My reasons for making this decision are below.

With respect to the Tenant's claim for twelve-months' compensation owed to him as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on June 22, 2018 and Section 51 of the Act changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) 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 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.*

With respect to this situation, I also find it important to note that Policy Guideline # 50 states that “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.”

Furthermore, this policy guideline also notes that “A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.”

Finally, the policy guideline outlines the following about extenuating circumstances: “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

When reviewing the evidence and testimony before me, the Landlord advised that his intention was to move into the rental unit and that the Notice was served in good faith at the time the Notice was served. However, the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act*, and used the rental unit for the stated purpose for at least six months after the effective date of the Notice. While J.C. submits that the “deadline date” for using the property for the stated purpose is six months, the Notice indicates that the Landlord must take steps to use the property for the stated purpose within a “reasonable period of time after the effective date of this Notice” and the policy guideline notes that a reasonable period of time to start using the rental unit in this situation would be approximately 15 days.

While intention and good faith do not need to be considered, I do find it important to consider some factors and testimony provided by the Landlord to determine the reliability and legitimacy of his submissions with respect to anxiety and the suggested extenuating circumstances. I note that the Landlord provided a letter to the property management company on June 19, 2018 to serve the Notice to the Tenant. It would seem to me then, that the Landlord would have been taking steps to prepare to move in after the effective date of the Notice; however, he did not provide any evidence of these preparations. I find it reasonable to conclude that had his plan been to move in after the effective date of the Notice, that there would have been some arrangements made for moving. Without any evidence of this, I find that this causes me to doubt the reliability of the Landlord’s credibility and submissions on this point.

Furthermore, the Landlord advised that his anxiety only increased on September 17, 2018 after being informed that he would be sued if he did not move into the rental unit. If his plan was to move into the rental unit since June 19, 2018, it is not clear to me why he would experience elevated anxiety given that there would be no threat of being sued had he simply moved into the rental unit in accordance with his stated intention. This causes me to be increasingly doubtful of the Landlord’s credibility and causes me to question his position further.

J.C. stated that moving is a “heavy burden” generally; however, according to their submissions, the Landlord’s plan was to move into the rental unit after the effective date of the Notice, and then move to a new condo in October 2019. While I agree that

moving is a significant and difficult undertaking, if the Landlord is especially prone to anxiety, it does not make sense to me that his plan was to move twice in the span of a year. I do not find this suggested plan to be reasonable or logical, especially given the severity of the anxiety that has been put forward by the Landlord.

Moreover, I find it important to note that a tenancy agreement of the Landlord's next tenant, dated February 7, 2019 was submitted as documentary evidence but only pages one, five, nine, and ten were provided. While I understand the need to redact the names of the new tenants for privacy concerns, it is curious to me why some pages are missing, especially any information with respect to the amount of rent being charged. This causes me to be suspicious that this may have been intentional, and in my mind, lends more weight to the Tenant's testimony that it was always the Landlord's intent to re-rent the rental unit at a considerably higher amount of rent.

In turning my mind to J.C.'s submissions that the Landlord's anxiety constituted an extenuating circumstance that prevented him from using the rental unit for the stated purpose for at least six months after the effective date of the Notice, while it was J.C.'s position that the Landlord suffered from anxiety prior to being informed of the threat of being sued on September 17, 2018 and that his anxiety increased significantly subsequent to this date, I find it important to note that the Landlord testified that he did not suffer from anxiety before this date. Based on this personal acknowledgement, I find that this carries more weight than J.C.'s submissions. While I do not doubt that the Landlord may suffer from anxiety, given that the Landlord's testimony is also inconsistent with the doctor's notes, I find that I am not compelled of the severity of the level of anxiety that the Landlord suffers from.

Furthermore, while J.C. referred to the submitted doctor's letters to support his submissions on anxiety, I acknowledge and accept that the Landlord has suffered from anxiety for a portion of his life. However, when reading these letters, I find it important to note that the wording contained within them includes statements such as: "he presented with the complaint of more severe anxiety...", "He reported that he was so incapacitated by his severe anxiety that he was unable to move on the move deadline date.", and "He expressed concerns that further legal proceedings would be difficult because of anxiety concerns." As the information contained within these letters appears to be mostly self-reported by the Landlord, I find it more likely than not that this doctor was simply recording statements made by the Landlord and that there is little directly from the doctor supporting any actual diagnoses linking increased anxiety with the Landlord's inability to move into the rental unit.

When reviewing the totality of the evidence before me, the above doubts and suspicions created by the Landlord's submissions causes me to be skeptical of the truthfulness of the Landlord's position, on the whole. These submissions are not consistent with common sense and ordinary human experience. As such, I place no weight on the position that the Landlord's anxiety was elevated to the point that he was incapacitated. Moreover, I am also not persuaded by the severity of the level of anxiety purported by the Landlord. Regardless, I am not satisfied that the reason of anxiety, put forth by the Landlord or J.C., would constitute extenuating or unforeseen circumstances as contemplated by the *Act*.

As the Landlord does not dispute not moving into the rental unit, and as the Landlord did not demonstrate taking any steps to use the property for the stated purpose, I am satisfied that the Landlord has failed to meet any of the requirements to use the rental unit for the stated purpose as per the *Act*.

As I do not find that there were any unforeseen or extenuating circumstances that prevented the Landlord from using the rental unit for the stated purpose within a reasonable period of time after the effective date of the Notice, for at least six months, I am satisfied that the Tenant has substantiated his claim that he is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$18,000.00**.

As the Tenant was successful in his claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

12 months' compensation	\$18,000.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$18,100.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$18,100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should

the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 7, 2019

Residential Tenancy Branch