



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenants NR and TR appeared with agent, PM and respondent LM appeared. Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenants testified that they were tenants at the property until September 30, 2018. The parties both testified that the monthly rent was \$1,750.00 at the end of the tenancy.

The property was owned by SL during the tenancy and SL is now deceased. Respondent LM acted as the power of attorney when the notice to end tenancy was issued. Respondent GH acted as the property manager.

The tenants testified that they moved out of the rental unit pursuant to a notice to end tenancy. Respondent GH issued the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on July 31, 2018. The notice had a stated move out date of September 30, 2018. Respondent LM testified that she authorized the issuance of the notice on behalf of respondent SL (now the Estate of SL).

The notice to end tenancy stated the following ground for ending the tenancy:

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.

Respondent LM acknowledged that the stated purchaser in the notice to end tenancy did not have a signed contract of purchase and sale regarding the property when the notice to end tenancy was issued. Respondent LM also acknowledged that the stated purchaser did not request in writing that the property be vacant because the purchaser intended to reside there.

Respondent LM testified that she instructed respondent GH to issue the notice to end tenancy.

Respondent LM testified that they tried to obtain financing for the stated purchaser to acquire the property after the notice to end tenancy was issued. However, respondent LM testified that stated purchaser became ill and then lost his job. As a result, respondent LM testified that the stated purchaser was unable to purchase the property and the property was sold to another buyer.

Analysis

The tenants are 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 former owner of the rental unit, respondent Estate of SL, against the power of attorney agent for the owner, LM and the property management company, GH. The Act defines a "landlord" as both the owner of the rental unit and the owner's agents. Based upon the testimony of LM, I find that respondent GH and LM were acting as the owners' agent. Accordingly, I find that all of the respondents of Estate of SL, LM and GH were landlords in this matter pursuant to the *Act*.

I find that the effective date of the Two Month Notice was September 30, 2019 and that the stated reason for the Two Month Notice was that the property was being sold and the purchaser intended to occupy the rental unit pursuant to section 49(5) 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 landlord did not sell the property to the stated purchaser. Based on the testimony of the respondent LM, I find that the landlords did not sell the property to the stated purchaser in the Two Month Notice. Furthermore, respondent LM acknowledged that the stated purchaser did not have a signed contract of purchase and sale regarding the property when the Two Month Notice was issued as required by section 49(5) of the *Act*. In addition, respondent LM acknowledged that the stated purchaser did not submit an instruction in writing asking for vacant possession so that the purchaser could move into the rental unit as required by section 49(5) of the *Act*.

Since the landlord has issued the notice to end tenancy without complying with section 49(5) of the *Act*, I find that the tenants have 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 respondent LM argued that extenuating circumstances existed because the stated purchaser sustained medical problems and he lost his job after the notice to end tenancy was issued. As a result, LM testified that the prospective purchaser was unable to qualify for a mortgage and the property had to be sold to another purchaser.

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 the stated purchaser would be unable to complete the purchase. Section 49(5) of the *Act* requires that the purchaser have a written contract of purchase and sale entered into and that all conditions of the sale be satisfied before issuing the notice to end tenancy. I find that respondent LM was aware that these conditions were not satisfied before the notice to end was issued but she instructed respondent GH to issue the notice anyway. I find that these are not extenuating circumstances.

Furthermore, I also find that LM has not provided sufficient evidence to establish that the stated purchaser had sustained an unexpected change in circumstances. Respondent LM did not provide medical records or employment records to corroborate the testimony that the purchaser lost his job as a result of a medical condition.

For the foregoing reasons, I find that the respondent LM has not established the existence of extenuating circumstances. Accordingly, I find that the tenants are entitled to a monetary award for compensation pursuant to section 51 of the *Act*. I find that the monthly rent was \$1,750.00 and that the tenant is entitled to a monetary award of \$21,000.00 (12 times \$1,750.00) against respondents, the Estate of SL and LM.

In regards to respondent GH, I find that extenuating circumstances do exist in regards to this respondent. Based upon the undisputed testimony of respondent LM, I find

respondent LM instructed GH to issue the notice to end tenancy. As such, I find that respondent GH 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 GH to be required to pay compensation for actions requested by his principal.

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

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

The total award to tenants is accordingly \$21,100.00 against respondents Estate of SL and LM only as set forth below:

<u>Item</u>	Amount
Compensation pursuant to section 51 (\$1,750.00 times 12)	\$21,000.00
Filing recovered by tenants	\$100.00
Total award to tenants against respondents, Estate of SL and LM	\$21,100.00

Conclusion

I grant the tenants a monetary order in the amount of **\$21,100.00** against respondents Estate of SL and LM only. If respondents Estate of SL and LM fail to comply with this order, the tenants may file the order in the Provincial Court to be enforced as an order of that court.

The tenants' application against respondent GH 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: November 11, 2019

Residential Tenancy Branch