



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 order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fees from the landlord pursuant to section 72.

The tenant attended the hearing and was represented by his counsel, MB ("tenant"). The landlord attended the hearing and was assisted by an interpreter. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, call witnesses, make submissions, and to question the other party on the relevant evidence provided. Each party had the opportunity to determine whether they would call witnesses or rely on their own testimony within the timeframe of the one-hour hearing.

While I have turned my mind to all the documentary evidence and testimony, not all details of the parties' respective submissions and/or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Issue(s) to be Decided

Is the tenant entitled to:

- A monetary order for damages or compensation pursuant to section 67; and

- Authorization to recover the filing fees from the landlord pursuant to section 72?

Background and Evidence

The parties agree that the rental unit involves an entire house. The tenant testified that the tenancy began on July 1, 2015, originally as a fixed term tenancy, becoming month to month at the end of the one year fixed term. Rent was set at \$2,100.00 and remained at that amount throughout the tenancy. The tenant acknowledges he received the security deposit he paid at the commencement of the tenancy.

On April 3, 2019, the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use which states an effective date of July 1, 2019. The reasons for ending the tenancy on the Notice states:

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 tenant testified he moved out of the rental unit on July 1st and the last month's rent was waived by the landlord as required by the Act.

On July 20th, the tenant was passing through his old neighbourhood and noticed the house was listed for sale and there was an open house going on. The tenant attended the open house, took a photograph of the 'for sale' sign and obtained a copy of the real estate listing sheet provided by the landlord's realtor. While at the open house, the tenant noticed the rooms were bare with no furniture to be seen, with the exception of a single television. A photograph of the sign, the listing sheet and a screen shot of the MLS listing were provided as evidence.

The landlord's witness MBT, the landlord's spouse, provided the following testimony. He and his elderly father moved into the house on July 5th. The trucks with his family's furniture didn't arrive until August. He and his father slept on the floor upon arrival in the new home.

The landlord provided nearly identical testimony but added that the home had stairs that made it inconvenient for the elderly father-in-law to move around. The landlord testified that the father-in-law fell and he went to the hospital to get stitches, however no documentary evidence was provided to support that testimony.

The landlord testified that attempts to contact the tenant for a condition inspection report on July 1st didn't work out, leading to him leaving on July 3rd and the family unable to move in until July 5th. She couldn't book a furniture moving truck until August 21st, and

that's why the tenant did not see any furniture in the home when he attended the open house in July.

She stated that she doesn't really want to sell the home, however because the home is inconvenient for the father-in-law, she is forced to sell it. She testified the home was purchased in 2016 and she never saw it until she moved in, July 2019 however the tenant disputes this testimony saying he personally met the landlord and her family back in July 2016 when they visited the home.

In submissions, the tenant's counsel notes that the landlord did not provide any evidence regarding making the home more accessible to the father-in-law by building steps or ramps. The tenant submits that the landlord has failed to mitigate her damages by not accommodating the family member and occupying the house as the landlord stated she would do in the Notice. The landlord did not issue the Notice in good faith and had an ulterior motive of commercial advantage when evicting the tenant.

The landlord submits she and her family were unable to move their furniture in immediately after ending the tenancy because the moving truck was not booked until August. The home was put up for sale because it was inconvenient for her father-in-law's accessibility; despite this, she really wants to stay living in it.

Analysis

Compensation for Ending a Tenancy is examined extensively in Residential Tenancy Branch Policy Guideline PG-50. Relevant portions of PG-50 are reproduced below.

Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances. The arbitrator has no authority to vary or alter the amount of compensation.

A step is an action or measure that is taken to accomplish a purpose. 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.

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.

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 the matter before me, the tenant has provided compelling evidence to show the landlord has not taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the

effective date of the Notice to End Tenancy. As stated above, a reasonable period to start occupying the house after the effective date of the Notice would be 15 days. Although the landlord's witness testified he moved in and slept on the floor since July 5th, I find no corroborative evidence to substantiate this. I also find it unlikely that the landlord and her spouse would subject his elderly father to sleeping on the floor, given his poor health and mobility issues. Secondly, putting the house up for sale within 20 days of ending the tenant's tenancy is not indicative of taking the steps to accomplish the purposes of occupying it as stated on the Notice to End Tenancy.

If the landlord used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord could be found not to be in violation of section 51 of the *Act*. In this case, however the evidence shows the landlord put the house up for sale almost immediately upon ending the tenancy and remains on the market until today. Although she personally does not want to sell it and may feel obligated to do so because the father-in-law may require moving to a different house, the fact remains that it was not occupied for at least six months before putting it up for sale. To be clear, the house was not used for the stated purpose of the landlord occupying the home before the intended use (selling the home) was changed.

The inconvenience of the home to the father-in-law is not an extenuating circumstance that stopped the landlord from accomplishing the stated purpose. The father-in-law's mobility concerns were known before he was moved into the home and I am satisfied the landlord knew the layout of the home they had owned since 2016.

I find the tenant is entitled to 12 months compensation at \$2,100.00 per month for a total of \$25,200.00 pursuant to section 51 of the *Act*.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$25,300.00**.

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 05, 2019

Residential Tenancy Branch