



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 section 67 of the *Residential Tenancy Act* (the *Act*) for:

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

The landlord attended the hearing with her daughter. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

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

Background and Evidence

This month-to-month tenancy began on December 2012, with monthly rent was set at \$850.00, payable on the first of every month.

It was undisputed by both parties that the tenant moved out on January 31, 2019, as per a 2 Month Notice issued to her by the landlord on November 28, 2018. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse". A copy was included in the landlord's evidence, along with a letter that was given to the tenant.

The tenant is seeking compensation as the landlord did not use the suite for the purpose indicated on the 2 Month Notice. The landlord confirmed in the hearing that the intention was for the landlord to move in after the passing of the landlord's husband of 51 years on November 7, 2018 , but due to extenuating circumstances, the landlord ended up re-renting the suite instead as of May 1, 2019. The landlord's daughter appeared in this hearing, and confirmed that her mother was already dealing with the grief of losing her father when the 2 Month Notice was issued, but nobody could see the extent to which she would be affected by her father's passing. The landlord testified that after this tenancy ended on January 31, 2019, the landlord had started to make arrangements for the move in such as repairing the fence as the landlord owned a small dog. The landlord's daughter testified that the 2 Month Notice was issued despite the concerns of the landlord's family, but the landlord was not in a position to make such decisions after her husband's passing, and due to her concerns about her financial situation. In the landlord's written submissions, the landlord's daughter wrote "Lesley's daughters and grandchildren believes that Lesley is too overcome with grief to make rational decisions. They urge her to listen to her counsellor".

The landlord discussed the arrangements with her counsellor who she had started to see in November 2018, and the counsellor urged the landlord to rent out the unit to another widow instead as the landlord was still dealing with the grief of losing her husband. The landlord included a letter from the counsellor dated November 12, 2019 confirming the arrangements that were made for the landlord not to move in after the counsellor strongly recommended that the landlord continue to reside in her own home.

The tenant testified in the hearing that the landlords did not meet the definition of extenuating circumstances as the 2 Month Notice was issued after the landlord's husband had already passed.

Analysis

Section 51(2) of the Act reads 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 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 Policy Guideline 50 provides more clarity about what is considered extenuating circumstances:

E. 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

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlords had re-rented the suite as of May 1, 2019, 4 months after the tenant had moved out. I have considered the fact that the 2 Month Notice was issued on November 28, 2018 after the landlord's husband had already passed away on November 7, 2018. Although I accept the fact that the landlord was dealing with an extraordinary amount of grief, and despite the testimony of the landlord's daughter that she not thinking rationally when the landlord had issued the 2 Month Notice, I find that the reasons provided for re-renting the home are not sufficient to support that there were extenuating circumstances that prevented the landlord from using the rental unit for the stated purpose. Although I am sympathetic towards the fact that the landlord was grieving the loss of her husband of 51 years, I am not satisfied that the landlord had provided sufficient evidence to support that the landlord was "too overcome with grief to make rational decisions". As supported by the landlord's own evidentiary materials, the landlord's daughter had assisted the landlord in the issuance of the 2 Month Notice to End Tenancy. I find that the landlord's family was actively involved in issuance of the 2 Month Notice and landlord's decisions to end this tenancy.

As a result of the 2 Month Notice, the tenant had complied by moving out and had to find a new residence. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord's noncompliance. I issue a monetary award to the tenant in the amount of \$10,200.00.

As the tenant was successful in her claim, I find that she is also entitled to recover the filing fee for this application.

Conclusion

I issue a \$10,300.00 Monetary Order in favour of the tenant in compensation for the landlord's failure to comply with section 49(3) of the *Act*, and for recovery of the filing fee for this application.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: December 10, 2019

Residential Tenancy Branch