



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 fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing and the landlord attended the hearing, represented by the landlord/owner's agent, CC. As both parties were present, service of documents was confirmed. The landlord's agent acknowledged service of the tenant's Application for Dispute Resolution package and stated he had no concerns with timely service of documents.

Preliminary Issue

At the commencement of the hearing, the landlord's agent testified that SF, named as the landlord in this proceeding, was not the owner of the rental unit, but a property manager. The landlord's agent stated that he was acting on behalf of the owner of the property and had full authority to participate in the hearing from the owner. The parties agreed that at the commencement of the tenancy, they understood SF was the property manager but they didn't know who the owner was. The tenants sought to add the owner of the property as a respondent in this Application for Dispute Resolution and this was agreed to by the owner's agent. The amendment was granted and the parties' names are properly reflected on the cover page of this decision. Throughout this decision, landlord and owner are used interchangeably to identify the same person, the landlord/owner of the rental unit.

Two tenants filed the Application for Dispute Resolution while only one of them was named on the tenancy agreement. Only parties who have signed the tenancy agreement hold any rights or responsibilities under the Act and accordingly, the

second tenant was removed from the parties names as listed on the cover page of this decision.

Issue(s) to be Decided

Is the tenant entitled to 12 months compensation for the landlord not accomplishing the stated reasons for ending the tenancy on the Notice to End Tenancy?

Can the tenant recover the filing fee?

Background and Evidence

The tenant provided the following testimony. The month to month tenancy began on September 1, 2014 with rent set at \$1,300.00 per month. A security deposit of \$650.00 was provided to the landlord, however that was returned at the end of the tenancy.

In February, 2019, the landlord served them with a Two Month's Notice to End Tenancy for Landlord's Use with an effective date of June 1, 2019. The reason for ending the tenancy stated on the Notice is:

The rental unit will be occupied by the landlord or the landlord's close family member.

The tenants gave notice to the landlord that they would vacate the rental unit before the effective date and moved out on April 1, 2019. They relocated to a new rental unit in the same neighbourhood at an increased rent of \$650.00 more per month. Since the time they moved out, the rental unit has remained empty. To corroborate this, the tenants provided letters from two neighbours still living close to the property attesting that to the best of their knowledge, nobody has moved in. The tenants also provided a video clip of the next door neighbour who says the same and a video clip dated August 2nd showing the inside of the house empty of belongings.

The landlord's agent provided the following testimony. The reason he got involved in this dispute was because the owner doesn't understand what she is doing when it comes to rental property. This is the story he heard, and he believes it's true.

The owner lives overseas but when she is in Canada, the rental unit is her primary residence. She owns other properties, however they are both tenanted. Other than a few weeks ago, when she occupied the home, the rental unit has been vacant since April 1, 2019. The owner has not re-rented the unit out. If the owner's intent in ending the tenancy were not good, she would have rented the house out already to someone else. It's been over a year now that the house has been unoccupied.

In February 2019 when the Notice was given, the original intent was for the owner's son and his new wife to move in. When the tenant moved out, the landlord's property manager advised the owner (living overseas) that the condition of the property may not meet her or her son's higher living standards. So, it was decided the house would be renovated. Although no photographs of the renovations were provided, the landlord's agent testified the rental was renovated to suit the owner's son's taste.

When the landlord gave notice, it was done in good will. However, the renovations delayed the move in. During that period, the landlord's son got married and got a job that he liked in his home country and he chose not to move into the recently vacated rental house in Canada. Also, the owner's mother got sick and the owner chose to remain overseas to take care of her mother. The owner would maintain a residence overseas and stay with the son during periods when she was in Canada.

Analysis

Residential Tenancy Branch Policy Guideline PG-50 [Compensation for Ending a Tenancy] addresses the requirement for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of the property and does not follow through and use the property as stated on the Notice. Part C is 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 (RTA only).*

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. (emphasis added)

Taking Steps to Accomplish the Stated Purpose

A step is an action or measure that is taken to accomplish a purpose. In this case, taking the steps to accomplish the stated purpose would be to **start moving into the rental unit**. If the reason for ending the tenancy stated that it was to renovate or

repair the unit, the steps involved would include hiring tradespeople or ordering materials.

The landlord's agent testified that immediately after the tenants were evicted, they went about renovating it to suit the landlord's son's taste. However, since the reason for ending the tenancy was for the landlord or the landlord's close family member to **occupy the rental unit**, I find the landlord failed to take appropriate, meaningful steps to move in, thereby failed to take the steps to accomplish the **stated purpose**.

Reasonable Period

As stated in PG-50,

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.

The landlord's agent testified that the unit has remained vacant since the tenants were evicted for an entire year, with the exception of a short period few weeks ago when the landlord was in Canada. Based on this testimony, I find the landlord has failed to take the steps required to accomplish the stated purpose within a reasonable period. It appears the stated purpose of occupying the unit was not achieved at all.

Accomplishing the Purpose/Using the Rental Unit

Once again, PG-50 states:

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.

Once again, the landlord's agent testified that after the tenants vacated the rental unit on April 1st, the owner renovated it to suit the liking of the owner's son instead of immediately moving into it. The period between April 1st and June 1st, (the effective date of the Notice), gave the landlord an additional two months to do renovations and repairs before the landlord was required to occupy the rental unit without violating section 51 of the Act. Eventually, neither the owner nor the owner's son moved in. I find the landlord did not accomplish the purpose for ending the tenancy stated on the Notice to End Tenancy for Landlord's Use.

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.

The landlord's agent testified that the eventual occupant of the rental unit was to be the owner's son and his new wife. The owner herself would maintain a residence overseas and visit the son and stay when she was in Canada.

Despite the owner's mother becoming ill, the intent was for the owner's son to occupy the rental unit with his new wife, not the owner, herself. I do not find the owner's mother becoming ill to be an extenuating circumstance preventing the landlord from accomplishing the stated purpose of occupying the unit. The second potential circumstance is the owner's son getting a job in his home country that he liked, which made him change his mind about moving to Canada and occupying the rental unit. Again, the son (close family member of the owner) changing his mind about occupying a rental unit does not constitute an extenuating circumstance.

As the landlord has not demonstrated that she took steps to accomplish the stated purposes for ending the tenancy within a reasonable time after the effective date of the Notice, the tenant is entitled to compensation pursuant to section 51(2) of the Act. I award the tenant 12 months rent at the rate of \$1,300.00 per month for an award of **\$15,600.00.**

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

Conclusion

I order that the tenant is entitled to a monetary order in the sum of **\$15,700.00**. I order that the landlord(s) pay this sum forthwith.

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: April 09, 2020

Residential Tenancy Branch