



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 tenants' application pursuant to 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 was represented by her counsel at this hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began in June of 2015. Monthly rent was set at \$2,600.00, payable on the first of every month. The tenants were informed by the landlord's agent, IB, in September of 2018 that the landlord was ending the tenancy in order to occupy the townhome themselves. The tenants were served with a 2 Month Notice for Landlord's Use, and both parties entered into a final 9 month, fixed-term tenancy for October 1, 2018 to June 30, 2019. The tenancy continued on a month-to-month basis until it ended on August 3, 2019. As the tenants had difficulty finding new housing, the landlords had agreed to change the effective date to allow the tenants more time to find housing. The effective date of the 2 Month Notice, was changed on request of the tenants, and they moved out on August 3, 2019.

The tenants described in detail the immense hardship they faced as a family due to the end of this tenancy, which included several moves in a short period of time, as well as the separation of family members. The tenants question the true intentions of the landlord in ending this tenancy, and are seeking compensation equivalent to 12 month's rent for the landlord's failure to use the home for the purpose indicated on the 2 Month Notice.

The tenants provided an affidavit from a neighbour who states that she had a conversation with the owner shortly after the tenants had moved out. The neighbour, JR, testified in the hearing as a witness to confirm the details of what took place on August 5, 2019. JR testified that she spoke to the landlord CY from their respective balconies, and the landlord informed her that they were residing there only a month, and then new tenants would be moving in. The tenants informed the landlord's agent on August 23, 2019 that they did not believe the landlord had ended the tenancy in good faith.

The landlord disputes that she had ever informed the neighbour of her plans to rent out the home to new tenants. The landlord testified that the conversation only involved the exchange of pleasantries, and that the landlord and her family did not have sufficient grasp of the English language, especially to the extent that would allow them to engage in a conversation about renting out the townhome. The landlord disputes that the landlord ever made such a statement.

The tenants questioned why the landlord ended this tenancy since they would often travel back and forth between Canada and China, and would only stay briefly in the

home. The tenants also questioned why the landlord did not enroll their daughter in school earlier.

The landlord answered that they were in the process of immigrating to Canada, which required them to have a permanent residence, instead of temporary housing. The landlord did not dispute that they made frequent trips between both countries, often staying briefly in the townhome. The landlord's counsel argued that the landlord still occupied the home, and that this still meets the definition required by the *Act*.

The landlord testified that they wanted to tour the intended school for their daughter, and found out later that enrollment was already full. As this was the choice school for their daughter, the landlord elected to wait.

The landlord testified that due to the lockdown imposed on January 22, 2020 in China due to the Corona Virus, they found themselves in a situation where they were "stranded", with the inability to return to their townhome. The landlord does not dispute that they had posted the townhouse for rent, and that this decision was made only after they had realized that they could not return for an unforeseen period of time.

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.

Policy Guideline #50 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the *Act*.

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 landlord had attempted to re-rent the home in February of 2020. In consideration of Policy Guideline #50 and the definition of “extenuating circumstances”, I find that the reasons provided by the landlord meet the criteria for “extenuating circumstances”.

I find that the landlord provided a reasonable explanation for why they would travel frequently between Canada and China, and why they had ended the tenancy for the purpose of residing there instead of finding alternative or temporary accommodation. The landlord testified that their plans to immigrate to Canada necessitated that they have a permanent residence, as they had little choice but to end the tenancy in order to

do this. I find that the landlord's evidence supports that they had tried to accommodate the tenants by giving them ample notice of their plans, by extending the effective date of the 2 Month Notice without accepting the tenants' offer of increased rent, as well as attempting to find alternative housing for the tenants. I find that the tenants experienced great hardship due to the end of this tenancy, and although I sympathize with the tenants and what they had faced, I do not find that the landlord had ulterior motives in ending this tenancy, nor do I find that they had contravened the *Act*.

As noted in RTB Policy Guideline # 2A, Section 49 of the *Act* does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused. I find that the landlord fulfilled their obligations by occupying the home for at least 6 months, and although sporadic and brief, their occupancy still meets the definition under the *Act* and policy guidelines. Furthermore, I find that they provided a reasonable and credible explanation for why they occupied the home in this manner. I also I find that it was due to unforeseen and extenuating circumstances that the landlord was unable to travel back to Canada as of January 22, 2020.

The landlord disputes the testimony of the neighbour who claimed to have had a conversation with the landlord, which involved the landlord's plan to briefly occupy the townhouse before re-renting. The landlord questioned the truth of the testimony as the landlord's primary language of communication was not English. I find that other than the disputed testimony of the tenants' witness, the tenants did not provide sufficient evidence to support that the home was rented out within the 6 months following the end of this tenancy. I find the sworn testimony, alone, does not sufficiently support that the home was actually re-rented to new tenants.

I find that the landlord fulfilled their obligations under the *Act*. For this reasons above, I dismiss the tenants' application for compensation without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were not successful with their claim, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

Conclusion

I dismiss the tenants' entire application without leave to reapply.

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: May 11, 2020

Residential Tenancy Branch