



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 an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant GY and the lawyer AD attended ("the tenants"). The landlords attended ("the landlord"). The hearing process was explained, and an opportunity was given to ask questions about the hearing process. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. No issues of service were raised. I find the tenants served the landlord in accordance with section 89 of the *Act*. The tenants acknowledged receipt of the landlord's materials.

Issue(s) to be Decided

Are the tenants entitled to:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The tenancy began on July 23, 2015; the tenants submitted a copy of the tenancy agreement. Monthly rent was \$1,850.00 payable on the first of the month. The tenant provided a security deposit which was returned at the end of the tenancy.

The unit is the upstairs apartment of a residential building owned by the landlord. The downstairs apartment was also rented.

The parties agreed the landlord served the tenants on March 19, 2018 with a Two Month Notice to End Tenancy for Landlord’s Use (the “Notice”) which required the tenants to vacate the unit by May 31, 2018. The landlord told the tenants that the landlord’s parents intended to live in the unit.

A copy of the Notice was submitted as evidence. The reason for the Notice indicated on the form is:

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 the individual’s spouse).

The tenants stated they were suspicious of the landlord’s motives. However, they did not dispute the Notice, and the tenants moved out on May 31, 2019.

The parties agreed that the landlord also served the downstairs occupants with a similar Notice, explaining that the landlord’s brother and family intended to move in there. The downstairs occupants also moved out of their apartment on May 31, 2019.

The tenants claimed that the landlord did not occupy the rental unit for the purpose stated on the Notice within a reasonable time after May 31, 2018 and accordingly, they

were seeking twelve months' rent as compensation under the provisions of section 51(2); at the time the Notice was issued, the compensation was two months. The tenants also request reimbursement of the filing fee of \$100.00.

The landlord testified that his father and mother moved in to the building on June 2, 2018, occupying both the upstairs and downstairs units; the intention was that the landlord's brother and/or guests would move in to the downstairs apartment at some unspecified time, although the landlord's brother has not come to Canada for that purpose.

The landlord stated that his father became ill shortly after moving in. The landlord testified that his father would not see a doctor because of the cost of medical services and the father's inability to speak English; accordingly, the landlord submitted no supporting concurrent medical evidence in support of this claim.

After one week, the landlord testified that his father was so ill that the parents moved back in with the landlord on June 9, 2018.

The landlord testified that because of the unexpected situation concerning his father's health, the landlord advertised the now vacant building to rent. He placed ads on "social media" within days of the father moving out (June 9, 2018); he quickly found a replacement tenant who rented the whole building ("replacement tenant"). The landlord testified that they signed a lease dated June 20, 2018 for \$3,000.00 monthly rent for the entire building. This included both the upstairs unit, once occupied by the tenants, and the downstairs apartment.

A copy of the new lease was submitted. It was for a fixed term of three months for monthly rent of \$3,000.00, which was less than the previous combined rent of the two apartments. The landlord explained that he was hoping his father's health would improve and his parents would then be able to move back in at the expiry of the 3-month term.

The landlord acknowledged that they consented to the replacement tenants operating a short-term rental advertised on an online rental marketplace which has taken place throughout the tenancy by the replacement tenants.

Instead, the landlord testified that the lease has subsequently been extended and the replacement tenants still rent the building and still operate a short-term rental through an online marketing site.

The landlord testified that his parents subsequently returned to their home country in August 2019 to seek medical treatment. The landlord submitted a medical report dated June 20, 2019, which stated that his father had been diagnosed with cancer in October 2018. The parents have not returned to Canada because of the father's ongoing medical treatment.

The tenants claimed that the landlord's parents either did not move in to the unit or did so for such a short period of time, that there is a reasonable presumption the landlord never intended the parents to live there. The tenants claimed that the landlord's true intentions were to rent both apartments for use as short-term rentals to increase revenue from the building.

The tenants testified they learned on June 25, 2018 that the property was listed by the replacement tenant on the online marketing website in May 2018; they recognized the unit from the pictures and the map providing the location.

The tenant submitted a screen shot of the website indicating that the replacement tenant's account was created in May 2018, before they vacated the unit. In response to the questions of the tenants, the landlord acknowledged that the replacement tenants and the landlord were from the same ethnic group but denied that they knew each other prior June 2018.

The tenants asserted that the reasonable explanation to be drawn is that the landlord evicted them in order to cooperate with the replacement tenants to rent both apartments on the online marketing website to increase revenue. The tenants inferred that the landlord had an arrangement with the replacement tenants which pre-dated the issuance of the Notice and their moving out of the unit. This unsupported allegation was denied by the landlord.

In response to the tenants' assertions, the landlord testified that they genuinely intended his parents to move in to the building permanently, a plan which was abandoned soon after the parents moved in for unexpected reasons ("extenuating circumstances"). In order to mitigate expenses, the landlord advertised the building, the replacement tenants applied, and a new tenancy arrangement began in June 2018.

The tenants claimed compensation under section 51. The landlord claimed there existed "extenuating circumstances" and the landlord was not liable to compensate the tenants.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the parties' submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. Both parties submitted substantial documentary evidence including written statements of facts with attached supporting materials.

This application involves consideration of the applicable sections of the Act in effect at the time dealing with the termination of tenancy by the landlord for the landlord's use of the property.

Section 49 provides in part as follows:

49 (2) Subject to section 51 [...], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be not earlier than 2 months after the date the tenant receives the notice...

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The landlord issued a Notice to end the tenancy for the reason set out in section 49(3), that is, that he intended to have his parents move in to the unit. The tenants testified that they accepted the served Notice and vacated as requested on May 31, 2018.

Section 51 provided in part as follows (emphasis added, as the section was in force at the relevant time and has subsequently been amended to increase compensation to 12 months):

*(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 **2 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

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(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.

The onus is on the tenants to establish their claim under section 51(2) that steps have not been taken, within a reasonable period after March 1, 2018, to accomplish the stated purpose for ending the tenancy, that is, to have a close family member of the landlord's move in to the unit, or that 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.

In this case, the parties disagreed whether the landlord's parents moved in to the unit from June 2-9, 2018 as claimed by the landlord and whether they vacated because of the father's ill health. The tenants asserted that the Notice was part of a subterfuge intended to get around the Act so that the landlord could rent the unit to someone else. in.

Policy Guideline # 50, Compensation for Ending a Tenancy provides guidance for determination of issues under section 51(2), stating, in part, as follows [emphasis added]:

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Considering the evidence submitted by both parties, the Act and the Guideline, I find the tenants have met the burden of proof on a balance of probabilities to establish their

claim under section 51(2), that is, that the rental unit was not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. This finding is based on the landlord's acknowledgement that no close family member occupied the unit except for the 7-day period when his parents lived there.

The landlord contended that there were "extenuating circumstances" pursuant to section 51(3) preventing the landlord from accomplishing the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice. That is, the landlord claimed the family member who was supposed to move in to the unit when the tenant vacated, was unexpectedly taken ill.

Policy Guideline # 50, Compensation for Ending a Tenancy provides guidance on defining extenuating circumstances. The Policy states as follows [emphasis added]:

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**.*
- ...*

*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*

Considering all the evidence submitted, the Act and the Guidelines, I find the landlord has *not* met the burden of proof under section 51(3) that there were extenuating circumstances justifying the landlord's failure to comply with section 51(2).

In reaching this conclusion, I have carefully considered and weighed the evidence provided by the parties as well as the submissions. I find the tenants were well-prepared, believable and sincere. I find their testimony to be reasonable, credible and

supported by evidence. I found the landlord's evidence to be less credible. For these reasons, I give greater weight to the tenants' testimony and I prefer the tenants' version of events to the landlord's version.

The tenants claimed that a reasonable assumption is that the landlord and the replacement tenants knew each other and arranged the new tenancy in advance of the tenants' departure. They base this assumption on their evidence, disputed by the landlord, that the replacement tenants registered the unit online for short-term rentals *before* the tenants left the unit, and the undisputed fact that the landlord and the replacement tenants had a tenancy agreement permitting short term rentals within 3 weeks of the tenants moving out.

In reaching my decision, I acknowledge that no evidence was submitted that the landlord benefits financially from the subsequent short-term rentals operated by the replacement tenants. No clear financial incentive to the re-rental has been established and I acknowledge that the landlord testified no such arrangement exists.

However, based on the testimony and evidence, I agree with the tenants that a reasonable assumption is that the landlord wanted the unit vacant so that the replacement tenants, or someone *other than his parents*, could move in to the unit; I find that the true purpose of the Notice was to accomplish this objective. I find that the issuance of the Notice was for the purpose of getting the tenants out so the unit could be rented to someone else, not so that his parents could move in.

I acknowledge that the father became ill and may very well have been in poor health in June 2018. However, I find that the landlord's goal was to rent to someone other than his parents and the father's health was not a key factor in what took place; I find this does not amount to an "extenuating circumstance".

For the reasons given, I find it unlikely the landlord ever intended that a close family member would occupy the unit. I find the landlord's version of events to be implausible and unconvincing.

I therefore find the landlord has failed to establish extenuating circumstances pursuant to section 51(3).

In conclusion, I find the tenants have established their claim under section 51(2). Accordingly, pursuant to the provisions of section 51(2) as it was in effect at the time, I

award the tenants an amount that is the equivalent of 2 times the monthly rent payable under the tenancy agreement, that is ($\$1,850.00 \times 2 = \$3,700.00$).

As the tenants were successful in their claim, I award the tenants reimbursement of the filing fee in the amount of \$100.00.

I therefore grant the tenant a monetary order of \$1,900.00 calculated as follows:

ITEM	AMOUNT
Section 51(2) rent: first month	\$1,850.00
Section 51(2) rent: second month	\$1,850.00
Reimbursement of filing fee	\$100.00
TOTAL MONETARY AWARD TO TENANTS	\$3,800.00

Conclusion

I grant a monetary order in favour of the tenant in the amount of **\$3,800.00**.

The landlord must be served with this order as soon as possible. Should the landlord 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: June 10, 2020

Residential Tenancy Branch