



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order for compensation under section 51(2) of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing. The landlord was assisted by lawyer GP. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Are the tenants entitled to:

01. a monetary award for compensation under section 51(2) of the act?
02. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained

rule 7.4 to the parties; it is their obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on October 29, 2012 and ended on August 15, 2019. Monthly rent at the end of the tenancy was \$855.00, due on the first day of the month. The landlord returned the security deposit of \$375.00 to the tenants. The tenancy agreement was submitted into evidence.

Both parties also agreed a Two Month Notice to End Tenancy for Landlord's Use (the Notice) was served in May. A copy of the Notice was submitted into evidence. It states the rental unit will be occupied by the landlord's close family member. The effective date of the Notice was August 15, 2019.

The landlord affirmed his 75-year-old father will move in to the rental unit. On September 28, 2019 the landlord's father had an accident and fractured bones. A document signed by a consultant orthopaedic surgeon on September 28, 2019 states:

This is to certify that Mr. [anonymized], 75 years male presented with history of fall and sustained fracture acetabulum right side. He is not fit to fly because of this injury for next 3 months.

Airline tickets for the landlord's father arriving in Canada on October 02, 2019 were submitted into evidence.

A medical report dated November 02, 2019 was submitted into evidence. It states the landlord's father is under treatment due to the accident suffered on September 28.

A medical report dated January 02, 2020 was submitted into evidence. It states the landlord's father is still not able to fly and will not be able to do so in the near future because of the accident and heart health issues.

The landlord affirmed as soon as his father is in the condition to fly he will move to Canada and live in the rental unit. It is unknown when the landlord's father will be able to fly and the landlord needs the income of his rental unit. Because of this, the landlord decided to re-rent the rental unit on January 02, 2020 on a periodic tenancy.

The landlord advertised on January 02, 2020 the rental unit and was able to re-rent it on January 15, 2020 for \$1,000.00 per month. The landlord did not offer the rental unit to the previous tenants because he was looking for a short-term periodic tenancy and he believes the tenants would like a long-term tenancy.

The landlord affirmed from August 15, 2019 to October 01, 2019 he painted, changed the carpet and the stove of the rental unit. The landlord also made the rental unit wheelchair accessible. The tenants disputed this affirmation and affirmed the landlord informed the tenants in early 2019 he wants to make renovations to the rental unit.

The landlord's attorney affirmed the landlord acted in good faith and the accident of his father is an extenuating situation under section 51(3) of the Act. The tenants affirmed they are entitled to a compensation equivalent of 12 times the monthly rent payable.

A monetary order worksheet was submitted by the tenants asking for a compensation in the amount of \$10,260.00 (12 months of monthly rent payments of \$855.00).

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Sections 49(2) and (3) of the Act state:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 4 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(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.

Residential Tenancy Branch Policy Guideline 50 states:

Reasonable Period

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.

If a landlord ends a tenancy to renovate or repair a rental unit, then they should start taking steps to renovate or repair the unit immediately after the tenancy ends. However, there may be circumstances that prevent a landlord from doing so. For example, there may be a shortage of materials or labour resulting in construction delays

Based on the testimony and the Notice, I find the Notice was served with the intent of the landlord's father occupying the rental unit. The renovations the landlord affirmed he completed are minor and are not the reason why the Notice was issued. I find the amount of time the rental unit was supposed to be vacant (45 days) is reasonable.

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

Section 51(3) states the landlord may be excused from paying the tenant the amount required by section 51(2) if extenuating circumstances prevented the landlord 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 Branch Policy Guideline 50 states:

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

(emphasis added)

The commonality of the examples outlined in the guideline for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority or control over the event.

Based on the landlord's coherent testimony, medical documents dated September 28, November 02, 2019 and January 02, 2020 and the airfares for a flight arriving in Canada on October 02, 2020, I find the landlord proved, on a balance of probabilities, that extenuating circumstances occurred and because of this his father was not able to move in to the rental unit.

As such, the landlord is excused from paying the 12-month rent compensation under section 51(2) of the Act the.

As the tenants were unsuccessful in their application, they must bear the cost of the filing fee.

Conclusion

I dismiss the tenants' 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: June 24, 2020

Residential Tenancy Branch