



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on June 1, 2016. Rent of \$2,000.00 was payable on the first day of each month. Rent was increased to \$2,156.00 effective September 1, 2018. On January 28, 2019 the Landlord served the Tenants with a two month notice to end tenancy for landlord’s use (the “Notice”). The Notice sets out an effective date of April 1, 2019. The reason stated on the Notice is that the landlord or a close family member of the Landlord would occupy the unit. The Tenants gave notice to end the tenancy and moved out on March 1, 2019. The mother of the Landlord occupied the unit as its residence from April 5, 2019 to June 24, 2019. The mother continued to hold its residence in another country

during this time. The unit was listed on Airbnb for August 2019 and forward occupancy. The Landlord knew of the Acts requirements for occupation of the unit at the time the Notice was given to the Tenants.

The Tenants claim compensation of \$25,972.00 for the Landlord failing to occupy the unit for at least 6 months.

The Landlord states as follows:

The mother had to return to the other country in order to see an eye specialist for a serious problem. The appointment was scheduled for July 17, 2019. This appointment was scheduled in advance of the mother's departure from the other country as the mother had planned to cancel the appointment if the medical issues resolved before them and had secured the return date in advance in order to obtain low season prices for the trip. The mother did not wish to see a specialist or medical help in Canada as the mother did not have health insurance to cover the costs as she had in the other country. The mother is retired with limited income. Also, the mother wished to remain under the medical care of a physician that she trusted and who knew her medical background. The mother's medical problem is a serious issue with glaucoma and the mother was not sure if surgery would be required. If surgery were required and carried out in Canada it would have cost too much money as compared to having the surgery out of country where it was covered by insurance. The mother also booked the return for a date in advance of the appointment out of country as the mother had past experience with delayed flights from strikes and as the price was considerably less than if the return flight were made for after July 1, 2010 as this is the start of the high season with higher flight prices.

The mother did not return to Canada after the appointment as the Landlord and its family had planned and purchased tickets in February 2019 to gather in the other country with the mother from August 13 to December 27, 2019 for a vacation and to help the mother prepare her belongings for the eventual permanent move to Canada.

The Landlord was not going to have employment income while out of country and rented the unit on Airbnb for August 2019 and forward to cover costs of the mortgage and strata fees.

The mother has applied to be an immigrant to Canada and can only reside as a visitor in the country during the application period for 6 months at a time. The mother was also required to complete the immigration requirements in the other country. These requirements were completed in November 2019. The Landlord provides documents showing that the application was made June 3, 2019, a medical appointment was required November 14, 2019 and medical instructions for follow up was dated November 25, 2019. The mother continues to reside out of country and could not return this spring due to the pandemic. The mother could have applied for a long-term visa of a year, but this type of visa is not available to persons who have applied for immigration to Canada. The mother did not return after the medical appointment as the mother would have been alone for at least a month in Canada while her family was in the other country.

The Tenant argues that the Landlord's evidence of knowing of the penalties for not occupying the unit as required by the Act and the planning in February 2019 for a return before that occupation period does not make sense. The Tenant argues that the medical reasons for returning are not extenuating circumstances as seeing a specialist in Canada would have been less than the cost of the airfare. The Tenant argues that the Landlord's planning in February 2019 is also contrary to the requirement of occupying the unit for 6 months. Further the Tenant argues that the planned return to the other country was made before the mother knew what requirements needed to be met out of country.

Analysis

Section 51(2) of the Act provides that 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.

Based on the undisputed evidence that the mother moved into the unit on April 5, 2019 I find the 6-month required duration of occupation would end October 5, 2019. Given the Landlord's evidence that the mother moved out of the unit on June 24, 2019, I find that the Tenants have substantiated that the rental unit was not used for the mother's occupation of the unit for at least 6 months duration.

Section 51(3) of the Act provides that 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.

While a person's requirement to be out of country for medical reasons could be seen as extenuating circumstances, there is only evidence of the mother having a one time medical appointment and no evidence that medical circumstances arose after or as a result of the medical appointment that prevented a return to occupy the unit. The Landlord's evidence is that the mother did not return to continue the occupation of the unit because of the planned trip out of the country in August 2019. This trip was planned in February 2019 shortly after the Notice was served and apparently with the full awareness by the Landlord of the Act's requirements for occupation of the unit.

There is no evidence that the trip could not have been planned for after October 6, 2019.

I do not consider a planned vacation to be extenuating circumstances. While the Landlord may not have wanted the mother to be alone for a month while the Landlord was on vacation, there is no evidence that the mother could not be alone, and there is no evidence that the mother does not live alone at its residence out of country. While not wanting a mother to be alone is understandable, there is no evidence of it being unreasonable or unjust for a short period of time.

The Landlord's evidence is that immigration requirements for the mother to attend out of country had to be met as early as November 14, 2019. This is outside the 6-month duration period and therefore cannot be considered as extenuating circumstances that prevented occupation of the unit during that period.

Finally, there is no evidence that at the time of planning the vacation trip, that included sorting belongings at the mother's out of country residence, the Landlord knew whether or when the mother would be successful in being able to move permanently through the immigration process. For this reason, I find that having to be out of country for sorting belongings for an eventual but unknown move date is not evidence of extenuating circumstances that prevented the mother from occupying the unit.

For the above reasons I find that the Landlord is not excused from paying the compensation required under the Act. The Tenants are therefore entitled to the compensation claimed of **\$25,972.00**. As the Tenants have been successful with their claim, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$26,072.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$26,072.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: July 8, 2020

Residential Tenancy Branch