



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, pursuant to sections 51 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The landlord and the tenant JF (representing self and tenant KL – the tenants) attended this teleconference hearing and were each given a full opportunity to be heard, to present sworn testimony and to make submissions.

The tenants testified that the landlord was served with the tenants' application for dispute resolution and evidence. The landlord confirmed receipt of the tenants' application and evidence.

The tenant confirmed receiving the landlord's evidence.

As both parties confirmed receipt of each other's documents and evidence, I find the parties were duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

- are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property); and
- are the tenants entitled to recover the filing fee for this application?

Preliminary Matter – Amendment

The tenants filed an amendment to the application for dispute resolution to change the landlord's name from RG to RP. The landlord confirmed that RP was his correct name and consented to the amendment. Pursuant to Rule of Procedure 4.1 this application is amended to reflect the correct name.

Background and Evidence

This fixed term tenancy began on October 1, 2018 which was scheduled to end on October 1, 2019. Monthly rent was \$2,100.00, payable on the first of every month.

It was undisputed by both parties that this tenancy ended on October 31, 2019, after the tenants were served with a 2 Month Notice (the Notice) by the landlord on August 30, 2019. The tenants moved out on November 1, 2019.

The landlord stated on the Notice the following reason for ending the tenancy: "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 that individual's spouse". A copy was included as part of the tenants' evidence.

The tenants seek 12 months compensation in the amount of \$25,200.00 (12 months rent x \$2,100.00) as the landlord did not use the home for the stated purpose on the Notice, and as of this date the home remains vacant.

The landlord testified that at the time the Notice was issued his wife was pregnant and their plan was to move to the house as they needed a bigger space. The landlord confirmed at the hearing that the intention was for him, his pregnant wife and their one and half year old to move in shortly after the tenants moved out, but due to a sudden unforeseen and extreme changes in circumstances, the landlord and his family were not and have not yet been able to move in the house. Their intention and plan continues to be to move in as soon as it is safe for him and his family to do so.

The landlord testified that shortly after the tenants moved out on November 1, 2019, he started preparing the home for his family's occupancy. As he works during the day, he started cleaning, painting and doing repairs on the house after his regular job in the evenings and during the weekends. The landlord testified that he has a friend that helped with some repairs, but the entire process was very slow and was furthered delayed by a large snowstorm and Christmas in December of 2019.

At the same time his wife's health changed and deteriorated and his unborn child was diagnosed with a serious health condition that was also impacting the mother's health. The landlord testified that his wife required constant help and support as she was having seizures and could not drive or look after their young child. The landlord testified that he became the primary caregiver to his wife and young child. He further testified that due to the current pandemic of Covid19 he has been unable to complete the move to the home as both his wife and child continue to have health issues that are require him to be more cautious with contacts. He reiterated that his intention continues to be to move as soon as it is safe to do so.

The landlord submitted into evidence confirmation from the midwife that his wife underwent an emergency C-section in January 2020; confirmation from his employer that from February to May 2020 the landlord had to take time off work due to his newborn's health condition; and confirmation from Children's Hospital verifying his newborn's admission to Children's Hospital for four days in May of 2020. The landlord's position is that there have been extenuating circumstances that have prevented his family from completing the move in a reasonable time.

The tenant JF testified that the tenants felt pushed out of the home and that the landlord's intention was to renovate and not move in as the house remains vacant. The tenant JF questioned the validity of the landlord's assertions regarding the seriousness of the medical conditions and pointed to email exchanges between her and the landlord in September of 2019 where the landlord stated that many of the medical appointments were made well in advance. The tenant JF also pointed to the letter from Children's Hospital which only mentions a hospitalization of four days in May 2020.

The tenants claim that there have been extensive renovations in the house, which the landlord refuted by stating that the only renovations have been minor repairs done by himself and his friend. The landlord refuted the tenants' position and pointed to the tenants' own photographic evidence to support his position that there is no activity in the house and there are no renovations taking place.

Analysis

The tenants seek a monetary award of \$25,200.00 representing 12 times their monthly rent as a result of the landlord's failure to use the rental unit for the reasons listed on the Notice. The basis for the tenant's claim lies at section 51(2) of the Act, which states:

Tenant's compensation: section 49 notice

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.

The parties agreed that the rental unit has not been used for the stated purpose in a reasonable time since the notice was issued in August 2019 and the tenants vacated the rental unit on November 1, 2019 and as of this hearing date the house remains vacant.

As per section 51 (2) of the Act, I find that the property was not used for the stated purpose in a reasonable amount of time.

As I have determined this, I must now determine if there were extenuating circumstances that would excuse the landlord from paying the compensation to the tenants:

Section 51 (3) of the Act states:

(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 addresses what can be considered as extenuating circumstances:

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

I find that it would be unreasonable to expect the landlord to move into the home during a period where his wife and unborn child are diagnosed and undergoing significant medical issues.

I prefer the landlord's versions of events and find that there were extenuating circumstances that have prevented him and his family to complete the move to the property. I appreciate the tenants' feeling that they were pushed out of the rental unit, it was their home and it remains vacant. I find that the tenants have failed to prove that there were other motives for the landlord to delay his move. Based on the landlord's supporting evidence and on the balance of probabilities I find that there were extenuating circumstances that have prevented the landlord from achieving the stated purpose.

Consequently, I dismiss the tenants' application for twelve months' compensation.

As the tenants failed in this claim, they must bear the burden for their own filing fee. I decline to award their request to recover the filing fee from the landlord.

Conclusion

I dismiss the tenants' application without leave to re-apply.

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: July 8, 2020