



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 award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were represented by their family members who acted as agents.

As both parties were present service was confirmed. The parties each testified that they were served with the respective materials. Based on the testimonies I find each party 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 as claimed?

Are the tenants entitled to recover the filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in 2012 and ended on September 1, 2020, in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated July 18, 2020. The monthly rent at the end of the tenancy was \$820.00. The rental unit is a basement suite in a detached home with the landlords occupying the other portion of the building. The rental unit was not occupied by the landlords' close family members but advertised online and a new occupant took possession in September 2020.

The landlords submit that the 2 Month Notice was issued with the intention that the parents of one of the landlords would reside in the rental unit. The parents are presently living with their adult son in a rental unit in a neighbouring municipality. The landlords submit that after the 2 Month Notice was issued in July 2020 the adult son was admitted to hospital on a number of occasions due to medical condition including substance use and psychological issues. The landlords submitted into documentary evidence the admittance records from the hospital showing that the adult son was admitted to hospital twice in August 2020. The medical records recommend medication and ongoing therapy within the community.

Due to the ongoing medical issues of the adult son the landlord's parents determined that residing in close geographic proximity to the hospital is beneficial and chose not to occupy the rental unit. The landlord's parents informed the landlord of this decision on September 5, 2020. The landlords submit that there was much discussion with the parents and despite their best efforts to convince them to move into the rental suite, the parents remained adamant in their decision. The landlord advertised the rental unit as available after the parents made it clear they would remain in their current suite with the adult son.

The landlords submit that the distance from the hospital to the rental unit is nearly 8 times greater than the distance from the parents' current location. The landlords explained that due to the nature of the adult son's medical issues they do not wish to leave him to reside on his own or bring him into the rental unit to live in close proximity to the landlord's family and children.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states if:

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In the 2 Month Notice the landlords indicated that the tenancy is ending as the landlords or a close family member will occupy the rental unit. The parties agree that the rental unit was never occupied by the landlords or their close family member.

I accept the evidence of the parties that the landlords failed to accomplish the stated purpose of the 2 Month Notice, to occupy the rental unit, and have instead found new occupants to rent the suite.

Section 51(3) 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

Residential Tenancy Policy Guideline 50 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing one's mind or failing to adequately budget to be examples of circumstances that may not be extenuating.

I find the evidence of the circumstances in this instance to be reasonably characterized as extenuating. I find that this is not a case where the landlord's parents capriciously changed their minds, but where a material change in circumstances occurred with the worsening medical condition of their adult son such that their original plan was no longer feasible or sensible. While I accept the evidence that the adult son's medical issues were pre-existing I find the hospital records, testimony and written submission to be sufficient to demonstrate that they were exacerbated after the issuance of the 2 Month Notice.

I find that the decision not to occupy the rental unit as intended but to continue to reside in their present residence, close to medical facilities and with their adult son, is not an instance of changing one's mind but a reasonable and inevitable conclusion due to the circumstances. I accept the reasoning of the landlords' that their parents saw limited options, most of which they believed would be detrimental to their son's well-being. I find that the circumstances faced by the landlords and their family members made it nigh impossible to occupy and reside in the rental unit as they had originally intended without serious risk to the life and health of the family members. I find that these circumstances would make it unreasonable and unjust to order a monetary award as against the landlords, and are properly characterized as extenuating.

Accordingly, I dismiss the tenants' application as I find that while the landlords did not accomplish their stated purpose for issuing the 2 Month Notice to End Tenancy, there are, in my view, extenuating circumstances that prevented the landlords.

Conclusion

The tenants' application is dismissed in its entirety 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: January 11, 2021

Residential Tenancy Branch