



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 tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord attended the hearing with an interpreter, RL. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenant's application and evidence package. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on April 1, 2017, with monthly rent set at \$1,000.00, payable on the first of every month. On October 10, 2019, the tenant was

served with a 2 Month Notice to End Tenancy for Landlord's Use as the purchaser of the home wanted the rental unit for their own use, specifically for the parents of the new owner, who were in China. The effective date of the 2 Month Notice was January 3, 2020. The tenant testified that he had difficulty finding new housing, and moved out on November 30, 2019 as allowed under the Act.

The tenant submits that on August 24, 2020, he was talking to a neighbour outside of his former rental unit, and was informed that the basement suite appeared to be re-rented to new tenants. The tenant investigated by knocking on the door of his old suite, and discovered that the suite was indeed re-rented.

The new landlord appeared at the hearing, and testified through their interpreter that due to language barriers they did not submit any written evidence for this hearing. The landlord confirmed that they did re-rent the suite as of July 1, 2020. The landlord testified that it was the true intention of the landlord's parents to travel and move from China, but due to the pandemic, and the age of the parents, the landlord and their family did not feel it was safe for the parents to travel. The landlord confirmed that the parents resided in a different province in China than where the pandemic had supposedly began, but the concerns were still there. The landlord testified that the unit remained vacant from the effective date of January 3, 2020 through to June 30, 2020, before it was re-rented. The landlord testified that travel restrictions were imposed during this period, which further complicated the original plans. The landlord testified that they were unsure about the foreseeable future, but that it was due to extenuating circumstances that prevented them from fulfilling their obligations. The landlord testified that the monthly rent is currently set at \$1,200.00.

Analysis

Section 51(2) of the Act reads in part as follows:

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.

(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 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the *Act*.

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 have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlord had re-rented the suite as of July 1, 2020. In consideration of Policy Guideline #50 and the definition of “extenuating circumstances”, I find that the reason provided by the landlord meet the criteria for “extenuating circumstances”.

I find that the circumstances around travel and health guidelines had changed rapidly and drastically from the time when the 2 Month Notice was issued to the effective date of the 2 Month Notice in January 2020, and within the following 6 months after that. Around the time of the effective date of the 2 Month Notice, on January 5, 2020, the World Health Organization released a statement of a pneumonia of unknown case in China. Within the next few months, the virus affected both Canada and China, and citizens of both countries were subject to health orders and travel restrictions. It is also undisputed that the most vulnerable are the elderly, and the landlord's parents fall within this category. By June 30, 2020, the state of the pandemic was still in place, and even as of this hearing date, Canada is still in the early process of distributing and administering vaccines to select members of its population based on risk and the limited supply that is available. The landlord was quite forthright during the hearing and confirmed that they did re-rent the suite, after several months of vacancy.

Based on the evidence and testimony before me, I find that the rental unit remained vacant from December 2019 through to June 2020. Considering that the applicant was paying \$1,000.00 in monthly rent, the landlord would have lost 7 months of rental income, totalling \$7,000.00 for this period. I find that the additional \$200.00 in monthly rent from the new tenants would not offset this amount of loss for a substantial amount of time. Although the circumstances are unfortunate and impacted the tenant in a substantial way, I am not convinced that the landlord had ulterior motives in ending this tenancy, especially considering the rental loss and effort in having to fill this vacancy several months later.

Although I sympathize that the tenant applicant experienced great hardship in having to find new housing, I do not find that the landlord had ulterior motives in ending this tenancy. I find that the evidence supports that due to unforeseen and extenuating circumstances, the landlord had to change their initial plans that were made before the pandemic had began. I find that around the effective date of the 2 Month Notice, the circumstances around travel and public health had changed drastically, and the landlord was unable to fulfill their obligations for these reasons. As I find that there are extenuating circumstances that prevented the landlord from fulfilling their obligations following the effective date of the 2 Month Notice, I dismiss the tenant's application for compensation without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was

not successful with their claim, the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

I dismiss the tenant's entire 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: January 20, 2021

Residential Tenancy Branch