



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNECT, FFT

Introduction

On November 17, 2020, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Tenant and Landlord attended the hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence that is before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The parties testified that the tenancy began on October 1, 2018 as a one-year fixed term tenancy that continued thereafter on a month to month basis.

The Tenant’s rental unit was a three-bedroom unit located on the upper floor of a home which had two other self-contained rental units below.

Rent in the amount of \$1,950.00 was due to be paid to the Landlord by the first day of each month. The tenancy ended on February 29, 2020 after the Tenant received a notice to end tenancy from the Landlord.

Tenant's compensation under the Act

The Tenant is seeking compensation in the amount of \$23,400.00 which is twelve months of rent payable under the tenancy agreement pursuant to section 51(2) of the Act.

The Tenant provided a copy of a December 10, 2019 letter she received from the Landlord where the Landlord informs the three tenants of the residential property that the Landlord has suffered an injury to her knee, and she has decided to move into the rental property as soon as possible. The Landlord writes that she wants to live in a level entry home where she can live on a single level and not worry about going up and down stairs with her injured knee. The Landlord writes that she will be moving into the unit with her two children and will be issuing the tenants proper notice before the end of the month.

The Tenant testified that she received a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 14, 2019 ("the Two Month Notice") from the Landlord. The Tenant provided a copy of the Two Month Notice. The reason cited for ending the tenancy within the Two Month Notice is:

The rental unit will be occupied by the landlord or the landlord's close family member.

The Tenant accepted the Two Month Notice and moved out of the rental unit by February 29, 2020. The Tenant submitted that the Landlord or a close family member did not move into the rental unit and occupy the property.

The Tenant testified that in May 2020 she discovered an advertisement for the upper rental unit on a local website. The Tenant testified that the rental unit was listed for \$300.00 more monthly rent than she had been paying. The Tenant provided a copy of the advertisement for the rental unit and a copy of a social media post indicating the Landlord had moved to a nearby town.

In response to the Tenant's application and evidence the Landlord concedes that she did not occupy the rental unit.

The Landlord stated that there were extenuating circumstances present and it would be unjust, unfair, and punitive to have to pay compensation to the Tenant.

The Landlord testified that she purchased the residential rental property in 2016 and initially planned to move there in June 2022. She testified that she tore the meniscus in her knee on November 4, 2019 and she was on crutches and her mobility was impaired. The Landlord provided a copy of an MRI report dated November 14, 2019 for her knee. The report indicates there is large and likely partially detached buckle handle tear of the lateral meniscus.

The Landlord testified that she had surgery on her knee on November 28, 2019 and the doctor told her the prognosis was good and it would be 4- 6 weeks for normal mobility. The Landlord provided a copy of a letter dated November 27, 2019 from her physician which states that the Landlord is having surgery on her knee and is unable to work for a period of time.

The Landlord stated that her home had multiple floors and she decided that she did not want to live in her current home. She decided to sell her current home and move to the rental property.

The Landlord made reference to emails she sent to a contractor she hired to make renovations to the rental property and to her insurance company, and to her accountant that she was moving. The Landlord provided a sworn affidavit from the contractor which states the contractor met with the Landlord at the beginning of March to discuss renovations to the rental unit and that the renovations were based on the Landlords personal preferences and considerations for her children.

The Landlord testified that she had renovations made to the rental property to meet her tastes. She testified that she spent \$129,000.00 on renovations which include:

- Flooring
- Skylight
- Painting
- New bathtub
- New appliances
- Gas fireplace
- Electric fireplace
- Kitchen cabinets

The Landlord testified that by January 2020 her knee had not improved to full mobility and she reinjured her knee in late January and again in the middle of March. She stated that she was back on crutches.

The Landlord testified that while moving to the rental property would be an improvement, it was still a challenge for her because of the three stairs to get up to the front door entry and the small shower. She stated that she expected her knee would be normal. She stated that she needed a home where she could live comfortably.

The Landlord also stated that her goal to move into the rental unit at the start of April was not achieved because of the renovations being made to the home.

The Landlord testified that she found a property that made sense to her needs and she purchased the property on May 29, 2020. She stated that she was disappointed that she could not live at the rental property, but she needed a safe and manageable home. The Landlord provided an affidavit from her realtor sworn February 5, 2021 that provides that the realtor showed the Landlord a home in a nearby town in May 2020 and that relator observed the Landlord was on crutches and limping.

The Landlord testified that she is still having knee issues and is still using crutches and receiving treatment.

The Landlord provided testimony that she gave notice to end all three tenancies at the rental property and she planned to occupy the entire home. She stated that when she gave notice to end the tenancy, she reasonably believed that it would not be an issue to move in.

The Landlord submits that her evidence that her children had designated rooms and the scope of her renovations along with her conversations with her realtor show that it was her intent to move to the rental property.

The Landlord stated that consideration of extenuating circumstances requires a unified analysis of the statute with consideration to the plain and ordinary meaning of the statute. She submitted that the definition of extenuating includes serving to lessen the seriousness of an offense; providing a partial justification or excuse for something; and conditions that make a bad action or mistake seem less serious, sometimes even making it seem reasonable. She submitted that arbitrators have accepted unexpected medical issues to be an extenuating circumstance. She submitted that the purpose of

the Act is not to penalize a Landlord who acted in good faith, but due to an unexpected medical issue made a hard decision to put her physical and mental well being first.

In reply, the Tenant submitted that in the Landlords December 14, 2019 letter she stated that she wanted a level entry home. The Tenant stated that the rental unit is a level entry home, aside from the laundry room. The Tenant stated that she feels she was duped by the Landlord.

Analysis

Section 51 (2) of the Act provides:

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.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy provides the following information with respect to extenuating circumstances:

Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family

member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

Policy Guideline #50 also provides information on 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. Some examples where it would be unreasonable and unjust for a landlord to pay compensation 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 Guideline also provides that 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.*

Based on all of the above, the evidence and testimony from the parties, and on a balance of probabilities, I find as follows:

Compensation for Breach of Section 51

I find that the Tenant moved out of the rental unit in accordance with the Two Month Notice and the Landlord has not occupied the rental unit since that time. I find that the Landlord advertised the rental unit for rent less than three months after the Tenant moved out. I find that the rental unit was not used for the purpose stated in the Two Month Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. Policy Guideline #50 provides that a reasonable period of time to start using the rental unit would be about 15 days from when the tenancy ends.

I am mindful that the Policy Guideline also provides the following: A landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The Landlord stated that her goal of

moving into the unit at the start of April 2020 was not achievable because of the renovations. The tenancy ended February 29, 2020. I find that based on the Landlord's own testimony of when she intended to move in, she did not plan to use the rental home within 15 days from when the tenancy ended as suggested to be a reasonable period in the Policy Guideline.

Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant \$23,400.00 which is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Extenuating Circumstances

I have considered whether or not there are extenuating circumstances that stopped the Landlord from using the rental unit and which may excuse the Landlord from paying compensation to the Tenant.

I have considered Policy Guideline #50 and I note that the circumstances provided such as fire or death, where it would be unreasonable and unjust for a landlord to pay compensation, are serious and/ or significant circumstances. I have considered the guideline and I find that circumstances that need to be present to excuse a landlord from paying compensation need to be serious or significant.

I have considered that the Landlord injured her knee and had surgery on her knee prior to deciding to issue the notice to end tenancy. I find that her knee injury was not something that unexpectedly happened to her after she had ended the tenancy. The Landlord stated in her letter to the Tenant that she is ending the tenancy because she wants to live in a level entry home where she can live on a single level and not worry about going up and down stairs with her knee.

The Landlord submitted that her knee was not healing as expected and she determined that the rental unit would no longer be suitable. I find that the Landlord ended the tenancy because she believed the rental unit was suitable. The Landlord changed her mind on suitability of the home prior to actually moving into the unit. The Landlord states that she reinjured her knee in late January and again in the middle of March. The Landlord submitted that she needed a place where she could live comfortably, so she changed her mind about occupying the rental home and purchased a new home on May 29, 2020.

There was no suggestion or evidence before me that the Landlord underwent a second surgery. There is no medical evidence before regarding the Landlord's knee other than the physician letter dated November 27, 2019.

I find it is reasonable to expect that recovery from knee surgery on November 28, 2019 could take time and affect mobility for weeks or months. As mentioned earlier, the Landlord stated she ended the tenancy to live in a level entry home where she can live on a single level and not worry about going up and down stairs with her knee. The evidence before me from the Tenant and Landlord is that the rental unit is for the most part a level entry home.

The Policy Guideline # 50 provides that changing your mind to occupy a unit is probably not an extenuating circumstance. I accept this guidance and I find that the Landlord changed her mind about the suitability of the rental home. I find that a possible delay in the Landlord's recovery from the knee injury / surgery should have been expected and this does not excuse the Landlord from having to pay compensation.

In accordance with section 51(3) of the Act, it is my finding that the circumstances submitted by the Landlord as an excuse from having to pay compensation to the Tenant does not meet the threshold of an extenuating circumstance, in accordance with the intention of the legislation and the policy guideline.

I find that the Landlord owes the Tenants \$23,400.00 which is the equivalent of 12 times the monthly rent paid under the tenancy agreement.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$23,500.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord did not use the rental unit for the purpose stated within the Two Month Notice. The Landlord must pay the Tenants the amount of 12 months' rent payable under the tenancy agreement.

The circumstances submitted by the Landlord as an excuse from paying compensation to the Tenant do not meet the threshold of an extenuating circumstance in accordance with the intention of the legislation and policy guideline.

The Tenant is granted a monetary order in the amount of \$23,500.00 for the Landlords breach of the Act and the cost of the filing fee.

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: March 17, 2021

Residential Tenancy Branch