



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNECT

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.

The tenant attended the hearing with their advocate. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlords confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenant's application. As neither party took any issue with the admittance of each other's evidentiary materials, the hearing proceeded.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the landlords' failure to use the rental unit for the purpose stated on the notice to end tenancy (i.e., landlord's use of property)?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began on June 1, 2013, and ended on October 1, 2020 after the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use on July 29, 2020 after the landlords had purchased the property. Monthly rent was set at \$635.00,

payable on the first of the month. The advertisement states that the 3 bedroom, 2 bath suite is newly renovated and available January 01 for \$1,700.00 per month.

The landlords do not dispute that they had re-rented the suite as of January 2021. The landlords testified that their original intention when they had served the tenant with the 2 Month Notice was to permanently occupy the home after extensive renovations. The landlords testified that they did occupy the home during the renovations, but became more familiar with the area when they moved in, and no longer felt comfortable residing in that neighbourhood. The landlords submit that that they did reside in the home from October 1, 2020 to October 30, 2020, and then re-rented the home at the market rate for similar homes in the area.

The landlords testified that their original intention was to follow through on the 2 Month Notice, and that they did provide assistance to the tenant with his move by providing him two month's rent instead of one.

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.*

Residential Tenancy Policy Guideline #2A provides more clarity about the requirements of section 49 of the Act when ending a tenancy for landlord's use.

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlords had re-rented the home instead of occupying it for at least 6 months. By doing so, the landlords failed to comply with the *Act*.

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 find that the reason provided for re-renting the home is not sufficient to support that there were extenuating circumstances that prevented the landlords from occupying the home for at least 6 months as required. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlords' noncompliance. I issue a monetary award to the tenant in the amount of \$7,620.00.

Conclusion

I issue a \$7,620.00 Monetary Order in favour of the tenant as set out in section 51(2) of the *Act*.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: April 28, 2021

Residential Tenancy Branch