



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with a tenant's application for compensation payable where a landlord does not use the rental unit for the purpose stated on a *Two Month's Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice"), as provided under section 51(2) of the Act.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed that the parties had exchanged their respective hearing materials and I admitted the materials into evidence without any objection.

The hearing process was explained to the parties. The parties were affirmed and instructed not to make any unofficial recording of the proceeding.

Preliminary Matters – Identity of tenants

Two co-tenants were named in filing this Application for Dispute Resolution. The respondent pointed out that he had not received a tenancy agreement from the former owner and he received only some of the pages of a tenancy agreement from the applicants. Upon review of the documents before me, I noted that both of the applicants are named as tenants on page one of the tenancy agreement; however, the signature page is not provided. On the *Two Month Notice to End Tenancy for Landlord's Use of Property* served by the former owner only one tenant is named: QK.

Upon further exploration, QK stated he believed he had paid all of the rent to the former owner but that he was uncertain and would have to check their banking records.

I noted that there was sufficient evidence pointing to QK as having status as a tenant but less evidence pointing to CN as having status as a tenant and I explored options as to address that issue. The tenant QK and CN agreed to withdraw CN's name from the Application for Dispute Resolution and the respondent had no objection. I amended the style of cause accordingly and informed the parties that if a Monetary Order is issued in favour of the tenant it will be upon the tenant and any other tenant/occupant/roommate to determine how they divide the compensation, if at all. Any dispute between co-tenants, roommates and occupants would have to be resolved in the appropriate forum, such as the Civil Resolution Tribunal.

Issue(s) to be Decided

1. Did the respondent use the rental unit for the purpose stated on the *Two Month's Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") and is the tenant entitled to compensation as provided under section 51(2) of the Act?
2. Did the respondent establish that an extenuating circumstance prevented the respondent from using the rental unit for the stated purpose on the 2 Month Notice and is the respondent excused from having to pay the compensation provided under section 51(2) of the Act?
3. Award of the filing fee.

Background and Evidence

The tenant testified that he moved into the rental unit in 2017 and was added to an existing tenancy agreement. Then on June 1, 2020 the landlord prepared an "updated" tenancy agreement naming the tenant QK, CN and another roommate as tenants. I was presented the first page of the "updated" tenancy agreement.

The tenant submitted that at the end of the tenancy the monthly rent was \$1850.00, payable on the first day of every month. The respondent stated that he accepted these facts, as put forth by the tenant.

The former owner put the property for sale and the respondent was the listing agent. The respondent entered into a Contract of Purchase and Sale to purchase the property and on September 29, 2020 the contract became unconditional. The respondent was to receive possession of the property on December 3, 2020.

The respondent requested the former owner issue a Notice to End Tenancy so that he, or close family member, may occupy the rental unit and on September 30, 2020 the former owner served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of December 1, 2020 indicating the following reason for ending the tenancy:

All of the conditions for the sale of the rental unit have been satisfied and purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

On October 17, 2020 the purchaser contacted the tenant and during a phone conversation informed the tenant that he had "had a change of plans" and offered to continue to rent to the tenant for \$2300.00 per month. On October 20, 2020, via text message, the tenant describes the \$450.00 rent increase as being too much and asks the respondent to consider a lesser rental rate of \$2100.00. The respondent declined, citing the current rental rates for other properties in the area. On October 24, 2020 the tenant informed the respondent that he had found another place to move to for December 2020.

Near the end of November 2020, the purchaser posted an advertisement for the rental unit seeking tenants for January 1, 2021 at the rental rate of \$2500.00 per month. The tenant saw the advertisement and noted that their patio furniture was in one of the photographs in the advertisement. The tenant provided a copy of the advertisement.

The tenant vacated the rental unit by December 1, 2020 and the purchaser gained possession of the rental unit on December 3, 2020 although there was still some junk left behind. The purchaser proceeded to clean up the property, paint it, installed new flooring, install a new oven, and secured new tenants for January 15, 2021 at the monthly rental rate of \$2500.00.

The tenant argued that a tenancy agreement is to run with the land and that the purchaser was bound to leave the rent the same as that payable under the existing tenancy agreement and as limited by restrictions on rent increases. The purchaser had requested the tenancy be ended so that he or his close family member could occupy the rental unit but the purchaser failed to fulfill this purpose for at least six months after the tenancy ended and instead re-rented the unit for a much higher rent. As such, the tenant is of the position he was wrongfully evicted so that the purchaser could

significantly increase the rent and the tenant is entitled to the compensation payable under section 51(2) of the Act.

The respondent submitted that when he had the property listed for sale his son had expressed interest in residing in the property since he was living and working in the area and that was the respondent's intention in asking the former owner to give the tenant a Notice to End Tenancy: so that his son may occupy the rental unit with a roommate. The respondent submitted a copy of a tenancy agreement executed by the respondent, his son and his son's intended roommate, dated October 3, 2020. The respondent also provided affidavits sworn by the purchaser's son and intended roommate.

The respondent submitted that on October 13, 2020 his son received an acceptance letter from a University in another town for a school term to commence on January 4, 2021 and his son decided to move to that town to attend university. The purchaser provided a copy of the acceptance letter from the university dated October 13, 2020 and the confirmation of enrolment dated December 8, 2020.

The respondent submitted that his son's decision to go to university is the reason the respondent approached the tenant about entering into a new tenancy for the rent of \$2300.00 per month as a "convenience for all". The respondent explained that \$2300.00 represented market rental rates at that time. According to the respondent, the tenant indicated he was not interested in continuing the tenancy as he wanted to get away from one of his roommates.

The respondent submitted that since his son was no longer moving into the rental unit and the tenant was not interested in entering into a tenancy with him, he had to re-rent the unit. However, the purchaser's son still intends to reside in the rental unit after his school term ends.

The respondent submitted that he is a licensed property manager and realtor bound by a code of ethics and he has never had charges against him in the 30 years he has been a real estate professional.

The respondent argued that the Act does not require him or his son to actually move into the rental unit; only that the purchaser have a "good faith intention" to do so in requesting the tenancy end, which he did when the 2 Month Notice was issued.

The tenant responded that he did not reject the purchaser's offer to enter into a new tenancy agreement solely to eliminate one of his roommates. Rather, with two roommates and adding his girlfriend to the household, the tenant was of the view it would be more difficult to find such a large rental accommodation which is why he was looking at smaller units after receiving the 2 Month Notice. The tenant stated that if the landlord had offered to continue the tenancy for the existing rental rate of \$1850.00 he may have continued the tenancy but this was not the offer before him. The tenant pointed out that there is no evidence submitted to support the statement that the purchaser's son will be moving into the rental unit after his school term ends.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

It was unopposed the tenant was paying rent of \$1850.00 at the end of the month to month tenancy and the tenancy ended pursuant to issuance of a *Two Month's Notice to End Tenancy for Landlord's Use of Property* under section 49 of the Act after the purchaser requested the seller give the tenant the Notice so that the purchaser, or purchaser's close family member, may occupy the rental unit.

Section 51 of the Act provides for compensation payable to a tenant where the tenancy has ended under section 49 of the Act. In this case, the tenant is seeking the additional compensation payable under section 51(2) of the Act.

Below, I have reproduced sections 51(2) and (3):

(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.

[My emphasis underlined]

The purchaser argued that the Act does not require the purchaser or his close family member to actually move into the rental unit, only that the purchaser have a good faith intention to do so; however, that is not accurate. A purchaser has to have a good faith intention to occupy the rental unit himself, or by his close family member, to succeed in ending the tenancy but the purchaser would have to actually fulfill the stated purpose on the 2 Month Notice to avoid the compensation provision of section 51(2), unless the purchaser is excused from paying the compensation due to an extenuating circumstance, as provided under section 51(3).

It is undisputed that after the tenancy ended the purchaser undertook renovations of the property and re-rented the rental unit for the monthly rent of \$2500.00 starting January 15, 2021. Accordingly, I find it is undeniable that the purchaser did not use the rental unit for the purpose stated on the 2 Month Notice after the tenancy ended.

The purchaser indicated his son still intends to move into the rental unit when his school term ends; however, I was not provided a copy of the existing tenancy agreement for the rental unit to see if it is a month to month tenancy or a fixed term. If the current tenancy agreement for the rental unit is a fixed term, the respondent would be precluded from ending the tenancy until the fixed term expires. Nor, was I provided a copy of a 2 Month Notice issued to the current tenants to demonstrate the current tenancy is ending soon so that the respondent's son may move into the rental unit. The respondent's son provided a copy of a tenancy agreement to show he had a short term tenancy for the period of January 1, 2021 to March 15, 2021 in the town where the university is located; however, as of the date of the hearing, the respondent's son had not moved into the rental unit. Accordingly, I find I am unsatisfied that the respondent's son will be moving into the rental unit in the near future and I am of the view that a

reasonable period of time has passed since the subject tenancy ended and the rental unit is not being used for the stated purchase.

The respondent provided reasons for not using the rental unit for the stated purpose during the hearing. While the landlord did not specifically point to extenuating circumstances, I proceed to consider whether the respondent may be excused from paying the tenant the amount required under section 51(2) due to extenuating circumstances, as provided under section 51(3).

The Act does not define “extenuating” or “extenuating circumstances” and I turn to the ordinary meaning which includes: a situation or condition that provides an excuse for an action; tending to lessen the real or apparent seriousness of something (such as a crime, offense, or fault); providing a partial justification or excuse for something.

Residential Tenancy Branch Policy Guideline 50. *Compensation for Ending a Tenancy* provides information and policy statements with respect to extenuating circumstances, which I have reproduced below:

E. 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

In the matter before me, the respondent pointed to his son's acceptance to a university in another town as being the reason his son did not move into the rental unit after the tenancy ended. However, I note that the acceptance letter of October 13, 2020 provides that the course is being delivered in a "distance learning format" and that a student would have to request a face to face format. The acceptance letter provides:

Oct 13, 2020

Dear Apprentice,

Welcome to Thompson Rivers University Trades & Technology. This letter is to invite you to attend:

Electrical - Level 3 – Distance Learning

Jan 4 – Mar 12, 2021 8:00 am start time

++ NOTICE: Due to the COVID-19 situation, this class will be delivered in a Distance Learning format

If you would prefer face to face schooling we can move your name forward on the list to the next class. Please let us know if you choose to move your name to a future face to face class.

In the subsequent enrolment confirmation letter of December 8, 2020 there is no indication that the purchaser's son had requested or is going to attend classes face to face.

I note that in the affidavit of the respondent's son, the son indicates he had applied for an electrical program early in 2020 and that there was a significant waitlist likely to be at a year. I was not provided documentation to support the statement that the purchaser's son applied for the electrical program early in 2020 and a significant waitlist of at least a year was reasonably anticipated. I note that the acceptance letter indicates the purchaser's son is entering level 3 of the program. Since the purchaser's son is entering level 3, it is unclear to me where he had taken the prior levels and whether travelling back to town where the university was located was reasonably expected. The purchaser's son did not attend the hearing to be further examined by me with respect to the information put forth by the purchaser's son.

While an affidavit is a form of evidence, I find it does not carry a lot of evidentiary weight in this case since an affidavit cannot be further examined or cross examined.

Also of consideration in making this decision, is that the purchaser offered to continue to rent to the tenant and it is apparent to me that the tenant considered the purchaser's offer since the tenant asked that the purchaser consider a lesser monthly rent of \$2100.00 instead of the \$2300.00 offered as seen in the text messages reproduced below (names omitted by me for privacy):

2020-10-17, 1:28 PM

Hi [redacted], can you give me a call when it's convenient for you? Thanks

Will do. Does about half an hour work?

Sure

2020-10-20, 3:34 PM

Hi [redacted], we've been thinking a lot about your offer to stay in the place but feel that the \$450 rent increase is a little steep given nothing is changing in the unit for us. Would you be open to renting it for \$2100?

A 1 bdrm is \$1,800 these days, a 3 bdrm basement suite \$2,250, 2 bdrm carriage home \$2,400. \$2,300 is low on the market and if it was refinished it would be over \$2,500. I can completely appreciate its more for the same but at \$2,300 it's still a good deal for today's prices.

2020-10-24, 11:28 AM

All good just thought I'd ask. But no worries we found a new place for December!

[Tenant's message on left; Purchaser's messages on right]

It is clear to me that the purchaser was only interested in continuing to rent to the tenant if the monthly rent was increased to \$2300.00 (an increase of \$450.00 per month) even though, according to the purchaser, his son had already decided not to move into the rental unit. I also note the purchaser's offer to the tenant was made on October 17, 2020, verbally, and reaffirmed on October 20, 2020, via text message, which is after the deadline for the tenant to dispute the 2 Month Notice. I find sequence of events and the

purchaser's insistence on increasing the rent to continue to rent to the tenant calls into question the purchaser's true motivation in ending the tenancy, which was to increase the rent.

In light of the above, I find the purchaser did not provide sufficient evidence for me to form an opinion that an exceptional circumstance prevented the purchaser from fulfilling the stated purchase on the 2 Month Notice. Therefore, I find the tenant entitled to the compensation equivalent to 12 month's rent, or \$22200.00, as provided under section 51(2) of the Act.

I further award the tenant recovery of the \$100.00 filing fee he paid for this Application for Dispute Resolution.

With this decision, I provide the tenant with a Monetary Order in the sum of \$22300.00 to serve and enforce upon the purchaser.

Conclusion

The tenant is provided a Monetary Order in the sum of \$22300.00 to serve and enforce upon the purchaser.

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: May 06, 2021

Residential Tenancy Branch