



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

- a monetary order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 27 minutes.

The landlord is referred to as "landlord" and "purchaser" in this decision.

At the outset of this hearing, I informed both parties that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). During the hearing, the landlord and the tenant both affirmed under oath that they would not record this hearing.

During the hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make decision. Neither party made any adjournment or accommodation requests.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

The tenant confirmed receipt of the former landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated August 31, 2020 ("2 Month Notice"). The effective move-out date on the notice was November 15, 2020. The tenant provided a copy of the notice for this hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the former landlord's 2 Month Notice.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) of the *Act*?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant stated the following facts. This tenancy began with the former landlord on August 15, 2017 and ended on November 15, 2020. Monthly rent of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were paid by the tenant and the former landlord returned both deposits to the tenant. A written tenancy agreement was signed by the former landlord and the tenant.

Both parties agreed to the following facts. The tenant vacated the rental unit, pursuant to the 2 Month Notice. The reason indicated on the 2 Month Notice was:

- *All of the conditions for sale of the rental unit have been satisfied and the 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.*

Both parties agreed to the following facts. The rental unit is a house. The former landlord sold the rental unit to the landlord and the landlord asked for vacant possession. The tenant provided a written copy of the buyer's notice to seller for vacant possession, dated August 30, 2020.

The tenant seeks compensation under section 51(2) of the Act for twelve months of rent compensation, totaling \$24,000.00, plus the \$100.00 application filing fee. The tenant claimed that because the landlord as the purchaser did not use the rental unit for the purpose on the 2 Month Notice, the tenant is entitled to compensation. The landlord disputes the tenant's application.

The tenant testified regarding the following facts. He seeks 12 months' rent compensation of \$2,000.00, totalling \$24,000.00. He received the former landlord's 2 Month Notice and moved out. The notice was given for the purchaser or a close family member to move in, after the former landlord sold the rental unit. The tenant found a new place to rent during the covid-19 pandemic, which was difficult. The tenant saw an advertisement online to re-rent the unit, after the tenant vacated, and before the six months was over. There were three units inside the house. The landlord or a close family member did not move into the rental unit, as the landlord re-rented it to new tenants. The tenant referenced the evidence he provided, including photographs of the rental unit and a copy of the rental advertisement.

The landlord testified regarding the following facts. She purchased the rental unit in November 2020 and asked for vacant possession. She issued a written buyer's notice to the former landlord seller, for her or a close family member to move into the unit. Her daughter and son-in-law were going to move into the unit. Her son-in-law was laid off in December 2020, so he could not pay the rent, in order to move into the unit. This layoff was unforeseen during the covid-19 pandemic. Her daughter was pregnant and not working, so she could not pay rent for the unit. The landlord's friend moved into the upstairs unit and the basement unit was rented to new tenants. The landlord could not move into the rental unit because she is too old to move around. The landlord referenced the evidence she provided, including emails between her and her son-in-law, as well as a letter regarding her intentions.

Analysis

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the purchaser does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

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.

The tenant did not dispute that the former landlord sold the rental unit to the landlord and the landlord, as the purchaser, asked for vacant possession for her daughter to occupy the unit. The tenant provided a written copy of the buyer's notice to seller for vacant possession, dated August 30, 2020. This notice confirms that the rental unit was sold from the former landlord to the landlord, pursuant to a contract of purchase and sale, dated July 6, 2020, and that the landlord wanted vacant possession of the rental unit, effective on November 15, 2020.

I find that the tenant vacated the rental unit on November 15, 2020, pursuant to the 2 Month Notice. It is undisputed that the landlord's daughter and son-in-law did not move into the rental unit after the tenant vacated and that it was re-rented to new tenants. Accordingly, I find that neither the landlord as the purchaser, nor a close family member of the purchaser, moved into the rental unit after the tenant vacated on November 15, 2020, as required by the 2 Month Notice.

Section 51(3) of the *Act* states the following:

(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 states the following, in part, with respect to extenuating circumstances:

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.*

I find that the landlord as the purchaser showed extenuating circumstances prevented her from using the rental unit for the purpose in the 2 Month Notice.

I find that the landlord could not have known at the time she issued the buyer's notice to seller for vacant possession on August 30, 2020, when the tenant vacated on November 15, 2020, or when the landlord got vacant possession of the rental unit on November 15, 2020, that the landlord's son-in-law would be laid off from his employment. I accept the landlord's testimony that her son-in-law was the only source of income for the landlord's daughter and him to rent the unit.

I accept the landlord's testimony that as the covid-19 pandemic was still ongoing, the landlord's son-in-law lost his job, so he did not have employment to pay rent for the rental unit and move in with the landlord's daughter. I accept the landlord's evidence that the landlord had to rent the rental unit to new tenants, to pay for the mortgage. I do not find this simply to be that the landlord "changed her mind" but rather that the covid-19 pandemic and the landlord's son-in-law's layoff from work, forced the landlord to consider new circumstances.

The landlord referenced her evidence, which shows emails between the landlord and her son-in-law in July 2020. The emails confirm that the landlord's daughter and son-in-law would move into the rental unit and pay a reduced rent of \$1,300.00 to cover the mortgage. The landlord also provided a letter, indicating that she is elderly and in poor health, that her daughter and son-in-law were going to move closer to her, that her son-in-law lost his job and could not afford to pay rent, and that she needed new tenants to help pay the mortgage for the rental unit.

Accordingly, I find that the tenant is not entitled to twelve times the monthly rent of \$2,000.00, totalling \$24,000.00, from the landlord. Therefore, the tenant's application is dismissed without leave to reapply.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's entire application is dismissed 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: May 31, 2021

Residential Tenancy Branch