



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenants CB (the tenant) and NB and the landlord attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Witness for the landlord PG also attended.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Are the tenants entitled to:

1. A monetary order in an amount equivalent to twelve times the monthly rent?
2. An authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on February 01, 2015 and ended on April 05, 2020. Monthly rent was \$900.00, due on the first day of the month. The landlord returned the security deposit of \$450.00 to the tenants.

Both parties agreed a Two Month Notice to End Tenancy for Landlord's Use (the Notice) was served on January 25, 2020. It states that the rental unit will be occupied by the landlord's close family member and the effective date was March 31, 2020. The landlord affirmed his 74-year-old mother-in-law (TK) intended to occupy the rental unit.

The tenants are claiming for compensation in the amount of \$10,800.00 (12 months of monthly rent payment of \$900.00) because TK did not occupy the rental unit for six months after March 31, 2020.

The landlord claims that extenuating circumstances prevented TK from occupying the rental unit for six months after March 31, 2020.

The landlord stated TK has been living with the landlord's brother-in-law and TK's grandchildren since 2012 in a house without stairs. The landlord affirmed TK decided to live with the landlord and the landlord's wife (witness PG). The travel time between both houses is approximately 20 minutes.

The landlord testified TK moved to the rental unit on May 01, 2020 because it was not convenient for her to move earlier. TK's health deteriorated after she moved to the rental unit and she returned to her previous home on June 21, 2020. The tenant said he does not believe TK's health deteriorated, as no document was submitted by the landlord to prove this.

The landlord submitted a statement signed by his brother-in-law on May 09, 2021:

My mother suffers from many health issues as well and her health was not at the best either around that time frame as well. After giving me many indications and signals of wanting to return to [redacted], I forwarded these messages to my sister and [landlord] and told them about the possibility of bringing her back to [redacted].

Both my sister [redacted] and [landlord] said to do what was best for my mother [redacted] and her health and pleasure. So by June 21, 2020, my family decided to bring my mother back home at [redacted] so she could feel the best possible way and live properly how she wanted. **I know her to stay was not as long as anyone hoped but in the end, what she wanted was to move back to [redacted] again. With all her health issues and her age, it was more convenient to be in [redacted] so she could be looked after better and remain healthy and well.**

(emphasis added)

Witness PG stated that her mother has a major heart issue and because of her health condition she has difficulties walking and could not use the stairs to access the basement rental unit. Witness PG affirmed that her mother used to visit her often when she lived in her brother's house. Witness PG said her mother missed living with her grandchildren when she was occupying the rental unit.

The landlord testified the rental unit was not occupied from June 22, 2020 to October 01, 2020 and it was re-rented for \$1,100.00.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Sections 49(2) and (3) of the Act state:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 4 months after the date the tenant receives the notice,

- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.
- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

Section 51(3) states the landlord may be excused from paying the tenant the amount required by section 51(2) if extenuating circumstances prevented the landlord 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 Branch Policy Guideline 50 states:

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

(emphasis added)

The commonality of the examples outlined in the guideline for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority or control over the event.

The tenant disputed the landlord's testimony and the landlord did not provide documentary evidence to prove TK's health has deteriorated since May 01, 2020. The testimony offered by the landlord and witness PG about TK's health condition was vague. The statement dated May 09, 2021 regarding TK's health condition was also vague.

Furthermore, the landlord was aware that TK would need to use stairs to access the basement rental unit when TK decided to move to the rental unit and that she would not be with her grandchildren.

Based on the testimony offered by the landlord and witness PG and the statement dated May 09, 2021, I find the landlord failed to prove, on a balance of probabilities, that extenuating circumstances prevented TK from occupying the rental unit from April 01 to September 30, 2020, the six-month period after the Notice's effective date.

As such, per section 51(2) of the Act, the tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenants a monetary award in the amount of \$10,800.00 (12 x \$900.00).

As the tenants were successful, I authorize the tenants to recover the filing fee in the amount of \$100.00.

In summary, the tenants are entitled to a monetary award in the amount of \$10,900.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenants a monetary award in the amount of \$10,900.00.

The tenants are provided with this order in the above terms and the landlord must be served with this order. Should the landlord 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: July 07, 2021

Residential Tenancy Branch