



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

This hearing dealt with an application by the tenant under the Residential Tenancy Act (the Act) for the following:

- A monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (“Regulation”) or tenancy agreement pursuant to section 51(2) and section 67 of the Act;
- An order requiring the respondent to reimburse the tenant for the filing fee pursuant to section 72.

The purchaser of the property in which the unit was located, NK, attended (referred to as “the landlord”). The tenant attended with the agent LT, and the advocate DD (the tenant). The witness MG attended at the opening of the hearing and withdrew; the tenant did not subsequently call MG as a witness.

The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. In addition, I informed them that if any recording was surreptitiously made and used for any purpose, they will be referred for i

The parties confirmed the email addresses to which the Decision would be sent.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 51(2) and section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

A copy of the tenancy agreement was submitted indicating that the tenant rented the unit, a basement suite, from GG and CG who lived on the main floor (referred to as "the previous landlord"). The parties agreed on the following background of the tenancy.

INFORMATION	DETAILS
Type of tenancy	Monthly
Date of beginning	April 30, 2016
Date of ending	Dec 30, 2020
Monthly rent payable on 1 st	\$1,050.00
Security deposit	\$475.00
Date of Application of tenant	March 16, 2021

The parties agreed that GG and CG, the previous landlord, issued a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") and served the Two Month Notice on November 14, 2020. The effective date of the Two Month Notice was January 31, 2021. A copy of the Two Month Notice was submitted which provided as follows:

All of the conditions for the 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.

A copy of the purchaser's (the landlord's) written request for the seller (the previous landlord) to issue an eviction notice was attached, a copy of which was submitted.

The tenant chose not to dispute the Notice and vacated the unit on December 31, 2020; the tenant received the statutory required compensation equivalent of one month's rent.

The parties agreed that neither the purchaser (the landlord) or a close family member occupied the rental unit. The landlord testified that he rented the upstairs unit on March 1, 2021 for \$3,250.00 monthly and the unit (previously the tenant's) on March 15, 2021 for \$1,800.00, which included an enlarged area.

The tenant asserted that the landlord did not occupy the unit as required under the Act and the tenant is entitled to 12 months as compensation.

The landlord testified that the circumstances amounted to extenuating circumstances. The landlord stated as follows. His extended family consisted of his parents, wife, and two pre-school age children who live in one home. He testified that his father had begun treatment for mental health issues in 2017. The unit was in a building near a creek and was quiet and green. The landlord anticipated that the move from a city environment to the smaller community, about 40 minutes away, would be beneficial to his father's health.

The landlord said he had the intention of occupying the entire building, including the unit, with his extended family. This would allow him to care for his aging parents who would live in the unit. He testified that his father saw the building before he put the offer in to purchase in October 2020 and was positive about the move.

However, as the closing date of February 4, 2021 approached, the father became increasingly anxious. He refused to pack and said he did not want to move. His mental health rapidly declined, and he required psychiatric medical attention.

The landlord submitted written submissions, a part of which stated as follows:

We had to cancel our plans of moving in due to extenuating medical circumstances which were beyond our control. My dad (name) suffered a lapse in his mental health and his doctor told him to not move at this time.

As per his doctor, a move to this new house at this time can be catastrophic for him. A note from his doctor is included.

We could not go against what his doctor recommended and had to change our plans at the last moment. This happened well after the tenants vacated the house.

If we made this move and if anything happened to my dad, I could never forgive myself and it would have been completely against the doctor's recommendation.

The landlord submitted two documents: a report from a psychiatrist dated Jun 10, 2021 and an undated signed letter from his realtor JS.

The letter from the psychiatrist states in part as follows:

.... the Covid pandemic has been extremely stressful for him [the landlord's father].

He felt increasing anxiety and depression. His son felt that father will have less anxiety and depression if they move to a rural area.

[The landlord's father] felt-panicky when he was told that his son bought a home in Mission next to a creek and green space: He did not want to leave his present accommodation.

On appointment of February 3, 2021, he was in extreme distress about moving to [the area in which unit is] where he does not know any one and has no familiarity with that area. He feared he will die there.

I explained to his wife that they should not move and his anxiety will get more severe in Mission as he will feel disconnected from his social network and his doctors.

He is strongly advised to stay in his present familiar neighborhood as his psychiatric state is fragile and he can not handle any move to unknown places.

The landlord testified that he consulted with his realtor JS about his options. The landlord testified that he considered backing out of the purchase but decided to complete the transaction when he learned about the possible financial and legal ramifications. The submitted letter from JS states in part as follows:

They [the landlord and the landlord's wife] wanted to get out of Surrey and be in a more quiet area. They also wanted to do this for [the landlord's] dad who they felt would benefit from this change. They fell in love with this house the first time they saw it. For them the area, creek & greenspace behind the house was very compelling.

They put the offer in and once it got accepted, they were very happy.

Their intention from day one was to get the house empty as the plan was for [the landlord], his wife and kids to stay upstairs and give the whole bottom basement to his parents. They all live together in the Surrey house as a family and planned to move to [the unit] the same way.

...

This was the plan for [the landlord] and family until I received a call on February 3rd from [the landlord]. He sounded stressed and told me that they cannot move into the house in [area] due to his dad's condition. He told me that his dad's doctor has recommended against this move to [the unit] as this can be catastrophic for his dad's mental health. He explained me a bit about the situation where his dad's condition has drastically worsened from before. His anxiety was up and his condition was very bad. He was dreading about their move to this new house as he did not want to leave his house in [city]. He feared about losing his friends and being isolated in new place which caused him serious anxiety about this move. They had just come back from his doctor and did not want to go ahead with buying this house.

...

In brief, these were extenuating circumstances which were beyond their control which led to their change of plan on February 3rd after his doctor's appointment. Their intention was clear and honest on the date they signed the agreement as it stated in the agreement to

vacate the premises where they gave 2 month notice to the tenants. There was an extremely serious medical condition with Nav's dad which led to this change.

The landlord advertised the upstairs unit for rent on January 28, 2021 in advance of the closing date of February 4, 2021. He said he did this to check out whether rental was possible if the sale went through and the family did not move in.

On February 3, 2021, the landlord made the decision not to move into the building and the unit because of his father's serious decline in health.

The tenant requested monetary compensation equal to 12 months rent. The landlord requested that the tenant's claim be dismissed without leave to reapply.

Analysis

Each party submitted substantial written arguments. The lengthy 86-minute hearing included considerable evidence. While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here.

The relevant and important aspects of the claims and my findings are set out below.

Two Month Notice

Section 49 of the Act allows a landlord to end a tenancy if the landlord (emphasis added):

1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;
2. is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit;
3. enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for landlord's use of property and the good faith requirement. The Guideline references the Act which allows a landlord to end a tenancy under section 49, if the landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

Under section 51(3) of the RTA, a landlord may only be excused from these requirements in *extenuating circumstances*.

Section 51 (2) and (3) of the Act provides:

(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.

(emphasis added)

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property and does not move in. The Guideline aids understanding about what constitutes "extenuating circumstances".

Extenuating Circumstances

With respect to extenuating circumstances, Guideline #50 notes as follows:

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.

The Guideline provides circumstances that could be considered extenuating circumstances, that is, 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 Guideline 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*

Compensation under section 51 of the Act

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

As acknowledged by the landlord, I find the landlord did not occupy the rental property for the reason stated within the Two Month Notice for a six-month duration or as required by the Act. The landlord rented the unit on March 15, 2021, six weeks after purchasing the unit. These facts were not disputed by the landlord who was forthright about the circumstances.

I have carefully considered and weighed the evidence provided by the parties as well as the submissions. I find the landlord's testimony to be believable, persuasive, calm and forthright and find that his testimony was supported by well-organized and complete documentary evidence.

In weighing the evidence, I find it more likely than not that the landlord intended to occupy the building with his extended family. I find it likely that the landlord intended to live in the unit permanently and at least for six months. The supporting documentary evidence from the doctor and realtor support the landlord's version of events that his father had a sudden, serious, and unexpected decline in health necessitating a late change of plans. I find the landlord has met the burden of proof with respect to the factors collectively described as being "extenuating circumstances". I find the circumstances described by the landlord are akin to the examples in the Policy Guideline and meet the threshold required.

Considering all the evidence submitted, the *Act* and the Guidelines, I find the landlord

has met the burden of proof under section 51(3) that there were extenuating circumstances justifying the landlord's failure to comply with section 51(2) making it unreasonable and unjust for the landlord to pay compensation.

I find the tenant's application fails. I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

I dismiss the tenant's application in its entirety 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: August 16, 2021

Residential Tenancy Branch