



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for a monetary order in the amount of \$20,692.00, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants and the landlords attended the teleconference hearing, all participants were affirmed, the hearing process was explained, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The landlords confirmed that they received the tenants' documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The landlords confirmed that they did not serve the tenants with their documentary evidence, which according to the landlords was supposed to be delivered by a third party. Pursuant to RTB Rule 3.15, the landlords' documentary evidence was excluded in full as it was not served on the tenants as required and at a minimum of 7 days prior to the hearing.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A 3-year fixed-term tenancy began on September 1, 2014 and reverted to a month-to-month tenancy after September 1, 2017. Monthly rent was \$1,650.00 per month and was due on the first day of each month. By the end of the tenancy, the parties agreed that monthly rent was \$1,716.00 per month. A Notice of Rent Increase form was also submitted in support of the rent increase to \$1,716.00 per month.

There is no dispute that the tenants accepted the 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 20, 2020 (2 Month Notice). The reason stated on the 2 Month Notice is:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

- The landlord or the landlord's spouse [Reproduced as written]

The landlords testified that their intention was to move into the rental property on January 1, 2021 because they were served on September 22, 2020 with a 2 Month Notice to be out of the BP Property that they had rented for the last 6 or 7 years.

The landlords testified that on December 14, 2020 they were approached by the mother of landlord CG with an offer to purchase the BP Property. The landlords stated they decided to purchase the BP Property and sell the rental unit as their third child, a son aged 24, had some personal issues and needed to move back home and the rental unit was not big enough for a family of five (2 parents and 3 children). The children were ages 17, 20 and 24 respectively at the time, according to the landlords. The landlords also testified that the BP Property was their family home since 1971 so it had sentimental value. The landlords also stated that they had to sell the rental property to pay for the BP Property. The landlords confirmed the rental property sold on February 17, 2021, which was supported by a sale listing submitted in evidence and confirmed by the parties during the hearing.

Neither party described the difference in square footage between the BP Property versus the rental property only that the BP Property was larger. The landlords stated that their mother went back and forth on whether they would be able to purchase the BP Property. The landlords stated that it was not until mid-December 2020, just two weeks prior to the effective vacancy date of the 2 Month Notice that the landlords were officially offered the ability to purchase the BP Property and due to the extra child being at home, they made the decision to purchase the BP Property and list the rental property for sale. The landlords stated the tenants were aware they may sell the rental property and were offered the opportunity to purchase the rental property. The parties agreed that the tenants were not in the financial position to purchase the rental property when it was offered for sale to them. The tenants confirmed being offered the opportunity to purchase the rental property.

The tenants are seeking 12 months of compensation due to the landlords failing to comply with the reason stated in the 2 Month Notice. The landlords are relying on the provision of the Act, which relates to “extenuating circumstances”, which I will address further below.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I find the 2 Month Notice included an obvious error with the effective vacancy date listed as January 1, 2020. I find the 2 Month Notice should have read January 1, 2021 and will base my decision off that date. This finding is pursuant to section 62(3) of the Act.

12 times the monthly rent - Section 51(2) of the Act applies and states:

Tenant's compensation: section 49 notice

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.**

[Emphasis added]

In addition to the above, section 51(3) of the Act states:

(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 applicable, from**

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and**
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.**

[Emphasis added]

RTB Policy Guideline 50 – Compensation for Ending a Tenancy states the following regarding extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters **that could not be anticipated or were outside a reasonable owner's control**. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

The following are probably not extenuating circumstances:

- **A landlord ends a tenancy to occupy the rental unit and then changes their mind.**
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

[Emphasis added]

I find RTB Policy Guideline 50 takes a reasonable approach and based on the evidence before me, while the landlords were offered the BP Property for purchase in mid-December 2020, the landlords made the decision to purchase the BP Property versus waiting the required 6 months' duration before closing on the sale of the BP Property. Had the landlords moved into the rental unit and waited for 6 months' duration after the January 1, 2021 effective vacancy date, the landlords would have complied with the reason stated in the 2 Month Notice.

I find the reasons provided by the landlords do not meet the definition of extenuating circumstances that prevented the landlords from complying with the stated purpose within a reasonable period after the effective date of the 2 Month Notice and using the rental unit for that stated purpose for at least 6 months' duration. Rather, I find the landlords made the decision to purchase the BP Property after the 2 Month Notice was served on the tenants and therefore made the conscious decision to purchase the BP Property and sell the rental unit.

Based on the above, I find the landlords have failed to satisfy me that extenuating circumstances existed that prevented the landlords from complying with the stated purpose within a reasonable period after the effective date of the 2 Month Notice and using the rental unit for that stated purpose for at least 6 months' duration. Therefore, I find the tenant are entitled to **\$20,592.00** in compensation from the landlords, comprised of twelve times the monthly rent of \$1,716.00 pursuant to section 51(2) of the Act.

As the tenants' application was fully successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find the tenants have established a total monetary claim of **\$20,692.00** comprised of \$20,592.00, which is 12 times the \$1,716.00 monthly rent, plus the \$100.00 filing fee.

Conclusion

The tenants' application is fully successful.

I find the landlords failed to use the rental unit for the stated purpose and instead, sold the rental unit just 1.5 months after the effective vacancy date listed on the 2 Month Notice and as a result, the tenants are granted 12 times the monthly rent as described above.

The tenants are granted a monetary order pursuant to section 67 of the Act, in the amount of \$20,692.00 as indicated above. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenants only for service on the landlords.

Should the landlords fail to pay the monetary order once served upon them, they could be held liable for all costs related to enforcement of the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 15, 2021

Residential Tenancy Branch