



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 money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing. The tenants were represented by legal counsel. At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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 a decision regarding this application. Neither party made any adjournment or accommodation requests. **I have reviewed all oral and written submissions before**

me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Are the tenants entitled to a monetary order the equivalent of twelve months' rent as claimed?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties confirmed the following. The tenancy began on March 1, 2017 and ended on June 30, 2020. The tenants rent was \$1664.00 per month. Although neither party submitted a copy, the parties advised me, and both agreed that the landlord served the tenant with a Two Month Notice to End Tenancy for Landlords' Use of Property on February 6, 2020. The Notice to End Tenancy required the tenants to move out of the rental unit by April 30, 2020, however the tenants did not move out until June 29, 2020. The ground for the Notice was:

- *The rental unit will be occupied by the landlord or the landlord's close family member*

The tenants counsel submits that the landlord undertook renovations before moving in and didn't move into the unit until late September 2020. Counsel submits that the landlords did not use the rental unit for the stated purpose on the notice within a reasonable period after the effective date of the notice, and therefore they should pay the tenants 12 months rent as compensation.

DM testified that she had her "druthers" about the notice and felt that the landlords were not being honest. DM testified that she walked by regularly to "check up" on the place and never saw any cars in the driveway and no one in the home. DM testified that there was a "major renovation" being done.

DK testified that she would go by the property on a regular basis and didn't notice anyone living in it until September 2020.

SW testified that she observed a "major renovation" being done on the property and didn't notice anyone living there until late September 2020.

WA testified that he went by the home daily, sometimes twice a day and didn't notice anyone living in the property until September 2020 or any cars in the driveway.

The landlords gave the following testimony. TH testified that if the tenants moved out on the effective date of the notice; April 30, 2020, he would have been able to move into the property much quicker. TH testified that they did minor work on the home to bring it up to standard for the arrival of his baby due in the fall of 2020. TH testified that only repairs were done to the home, not renovations. TH testified that painting and removing carpet was done to help mitigate the smell from the tenants' pet as his daughter has pet allergies. TH testified that they started moving items into the home in mid July 2020 and slept their first night in the home on August 29, 2020. TH testified that the tenants didn't see any activity in the home because they installed black out curtains to minimize the sun and to cool the home.

TH testified that if the tenants had moved at the end of April 2020, his wife was only four months pregnant and would have been able to move more quickly. TH testified that he is a landscaper, and the early spring is slower for him and would have had more time to move especially since the global pandemic occurred at that time.

TH testified that the tenants delaying their move also impacted his family greatly as his wife was 7-8 months pregnant during the summer and unable to help and due to the nature of his physical job, he could only work during weekends. TH testified that no major renovations occurred and that only required repairs were done. TH testified that they painted the home to freshen it up and that work was done by July 4, 2020. TLH testified that they moved in on August 29, 2020 and have been there since.

Analysis

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

The applicant seeks payment of compensation in the amount of twelve times the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the property was not used for the stated purpose for ending the tenancy within a reasonable time. DM, SW, DK, WA each testified that they walked by the home on a regular basis and didn't observe anyone living in the home until late September 2020. They each also observed work being done on the deck and solarium of the home. The tenants and counsel submit that the landlord undertook major renovations. The tenants have not provided sufficient evidence to support that allegation. I find that a wood pile and discarded cardboard boxes does not constitute sufficient evidence of a major renovation.

TH provided clear concise testimony that the property only had minor work done to get it to standard of cleanliness and to remove allergens and only minor cosmetic work in preparation for his new baby. The landlord has satisfied me that only required minor work and decoration was done, and not a major renovation.

Counsel submits that Residential Tenancy Policy Guideline 50 states that 15 days is considered reasonable for a landlord to move in after taking possession. Counsel submits this portion from Guideline 50 should apply.

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit. It will usually be a short amount of time.

For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days. If a landlord ends a tenancy to renovate or repair a rental unit, then they should start taking steps to renovate or repair the unit immediately after the tenancy ends. However, there may be circumstances that prevent a landlord from doing so. For example, there may be a shortage of materials or labour resulting in construction delays.

I do not agree with counsel. The above is a "guideline" that may be appropriate under normal or almost ideal circumstances. Counsel submits that the pandemic impacted the tenant's ability to move out at the end of April 2020, but the pandemic did not affect the landlords. The COVID 19 pandemic has been anything other than "normal" or ideal. In

addition, I do not agree with counsel's submission that LL being pregnant is not an extenuating circumstance. Furthermore, I do not agree with counsel's submission that TH's employment had no impact on the matter. TH explained that early to late spring was ideal to move as his wife was still only in the 4–5-month range of her pregnancy and that his work was slow at that time.

I found counsels submission "*that nothing really changed from the time the landlords issued the notice to the time they took possession that would have delayed their move in*", to be flawed, illogical and contradictory. By stating that the pandemic affected her clients but not the landlords is simply incorrect. When the landlord issued the notice to end tenancy on February 6, 2020, the pandemic had not affected this province or this country and was given at that time to align with a reduced work schedule to focus on the move into the subject unit. However, the pandemic was very much a part of daily life by the time the effective date of the notice came and most of the province was in the midst of a lockdown and restrictions did not ease until the summer of 2020. The tenants did not vacate the home until June 29, 2020.

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.

TH was clear and compelling while giving his testimony. He explained how his wife's pregnancy, the delay in getting the property, limited supplies, and labour for repairs and COVID 19 delayed their move in date to August 29, 2020. I find that the totality of all those factors, clearly falls under the category of "extenuating circumstances", as such; I find that the tenants are not entitled to any compensation.

Conclusion

The tenant's application is dismissed 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: September 27, 2021

Residential Tenancy Branch