



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlords confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began sometime in 2017, and ended on February 7, 2021 after the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use on November 25, 2020. The effective date of the 2 Month Notice was January 31, 2021, but both parties mutually agreed to extend the date to February 7, 2021.

The landlords served the tenant with the 2 Month Notice in November 2020 as they intended to move into the townhome. The landlords reside in a different province, and their intention was to relocate and move to the townhome. It is undisputed that on March 9, 2021 the landlords had listed the home for sale instead, and an offer was accepted on March 11, 2021.

The landlords provided an explanation for why the home was sold instead of occupied by them. The landlords testified that they had made plans to relocate and move into the home, but on January 28, 2021, the provincial health officer and the Minister of Health released a joint statement strongly discouraging "any travel beyond your local community, unless it is absolutely essential for work or medical care". The landlords testified that they were also impacted by extreme weather.

The landlords submitted several documents to show that they had made plans to move, and that it was due to extenuating circumstances that prevented them from fulfilling their obligations. The landlords provided a confirmation dated January 31, 2021 to move their internet services for February 6, 2021. The landlords also provided a receipt for a new mattress they purchased on November 27, 2020, a new television they purchased on January 30, 2021, and a receipt dated December 17, 2020 for a storage box rental for January 15, 2021. The landlords also provided a list of the cancelled hotel bookings from January 31, 2021 to February 11, 2021.

In light of the uncertainty, and the risk associated with travelling through multiple communities, the landlords testified that they had to change their plans, and listed the townhome for sale instead in March 2021. The landlords testified that due to the uncertain nature of when it would be okay to move, the landlords decided to list the home for sale instead. The landlords testified that they did not expect the home to sell

so quickly. The landlords also noted that the travel restrictions were not lifted until June 2021.

Analysis

Section 51(2) of the Act reads in part as follows:

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.

(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.

Policy Guideline #50 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the Act.

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 have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlords had sold the home in March 2021 instead of moving in themselves. In consideration of Policy Guideline #50 and the definition of “extenuating circumstances”, I find that the reasons provided by the landlords meet the criteria for “extenuating circumstances”.

I find that the circumstances around travel and health guidelines had changed rapidly and drastically from the time when the 2 Month Notice was issued in November of 2020 to when the tenant was to move out at the end of January 2021. I find it undisputed that a statement was released by the provincial health officer and Minister of Health on January 28, 2021, which was two days before the original effective date of the 2 Month Notice. The statement clearly emphasized that travel was strongly discouraged, especially non-essential travel beyond one's own community. In this case, the move would necessitate that the landlords travel through multiple communities, and from one province to another.

I find that the landlords were forthright about their decision to sell the home in light of the health orders and travel restrictions at that time. I also find that the landlords had provided substantial and detailed evidence to support that the 2 Month Notice was issued in good faith, and that they had true intentions to move in. I have no doubt that the landlords had plans to move in, but their plans changed due to necessity rather than due to a simple change of heart.

Although the circumstances are unfortunate and impacted the tenant in a significant way, I am not convinced that the landlords had ulterior motives in ending this tenancy, especially considering the time, energy, and funds the landlords had spent in order to complete the move.

Although I am highly sympathetic towards the tenant and the hardship that they faced with the ending of this tenancy, I find that the evidence supports that due to unforeseen and extenuating circumstances, the landlords had to change their initial plans. I find that around the effective date of the 2 Month Notice, the circumstances around travel and public health had changed drastically, and the landlords were unable to fulfill their obligations for these reasons. As I find that there are extenuating circumstances that prevented the landlords from fulfilling their obligations following the effective date of the 2 Month Notice, I dismiss the tenant's application for compensation without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful with their claim, the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

I dismiss the tenant's entire application 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 8, 2021

Residential Tenancy Branch