



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on November 29, 2021. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51.

The Landlord and the Tenants all attended the hearing and provided affirmed testimony. All parties confirmed they understood Rule 6.11. The Landlord confirmed receipt of the Tenants' application and evidence. The Landlord confirmed that they did not submit any documentary evidence.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

Both parties agree that monthly rent was \$1,900.00 at the time the tenancy ended. The Tenants stated that they received the 2-Month Notice to End Tenancy for Landlord's Use (the Notice) on or around October 31, 2020, with an effective date of December 31, 2020. The Tenants stated they moved out around December 15, 2020.

A copy of the Notice was provided into evidence, which indicates the Landlord selected the following ground as a reason to end the tenancy:

- 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).
 - The father or mother of the Landlord or the Landlord's Spouse

The Landlord stated that they issued this Notice so that the Landlord's mother and father could move into the main floor unit. The Landlord stated that his parents moved in on December 16, 2020, a day after the Tenants moved out. The Landlord stated that they ran into financial difficulties with their business, and were forced to sell this rental house to pay off debts. The Landlord stated that their restaurant was not making enough money to pay the bills, so the Landlord decided to sell the house. The Landlord stated he listed the house for sale on February 15, 2021, and accepted an offer around April 4, 2021. The Landlord stated that his parents moved out on May 31, 2021, the day before the new owners took possession. The Landlord stated that they were unaware of the tenancy laws leading up to this and had no idea they had to use the rental unit in the manner indicated on the Notice for at least 6 months. The Landlord acknowledged that he did not fulfill the purpose of the Notice for at least 6 months, and failed to do so because they ran into financial trouble, and because they did not understand the tenancy laws.

The Tenants stated that they felt this Notice was issued in bad faith by the Landlord, after repeated attempts to raise their rent above the allowable amounts. The Tenants stated that the Landlord came to them 2-3 times in the past years asking for a rent increase, even during the Covid-19 pandemic, and the Tenants said no, and asked the Landlord to comply with the rental increase provisions of the Act. The Tenants stated that following this, they were issued this Notice. The Tenant stated that he works nearby, and would routinely drive by and see no evidence of the Landlord's parents living there. The Tenant noted that he only saw tradespeople parked out front, as the Landlord did work on the house prior to listing it for sale in February 2021. The Tenants

do not believe the Landlord ever moved his parents into the rental unit, and even if they did, it wasn't for at least 6 months.

Analysis

The Tenants are requesting 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act. I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord 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 (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlord to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice. The Notice was issued

and received by the Tenants on October 31, 2020. The Landlord selected the following ground:

- 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).
 - The father or mother of the Landlord or the Landlord's Spouse

The Landlord asserts that his mother and father moved into the rental unit as of December 16, 2020, the day after the Tenants moved out. However, the Tenants assert that this was not done, and instead they saw no evidence anyone moved in. The Tenants also assert that they saw working being done on the property, and no evidence of anyone living there. I note these two versions of events contrast with each other. In this application, I note the onus is on the Landlord to establish that they accomplished the stated purpose on the Notice. In assessing this matter, I note the Landlord has failed to provide any documentary evidence to support that his parents moved in. No photos, bills, or evidence of residency was provided to corroborate the Landlord's version of events. I find the Landlord has failed to sufficiently demonstrate, that it is more likely than not, that his parents moved in, as of December 16, 2020, as he asserts.

Given my findings thus far, I find the Landlord has breached section 51(2) of the Act. As such, I will now consider whether or not the Landlord has provided sufficient evidence to show that he had extenuating circumstances which prevented him from being able to accomplish the stated purpose on the Notice.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states 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. 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.

I have considered the totality of the evidence and testimony, and I find there is insufficient evidence to show that there were “extenuating circumstances” or that there were exceptional circumstances such that the Landlord ought to be excused from paying the compensation due. The Landlord stated that he was suffering financial hardship with his family business, which forced him to sell this rental property, shortly after the Tenants moved out. However, the Landlord provided no documentary or corroborating evidence as to what the nature and extent of the hardships were. Little to no explanation was provided at the hearing, and it is not clear how the Landlord’s situation changed from the time the Notice was issued, to when they decided to shift gears and sell. Ultimately, without further explanation and evidence, I find the Landlord failed to sufficiently demonstrate that there were exceptional circumstances such that they ought to be excused from accomplishing the stated purpose. I find the Landlord is liable to pay the Tenants 12 times monthly rent.

As the Tenants were successful with the application, I also grant the recovery of the filing fee (\$100.00) against the Landlord, pursuant to section 72 of the Act.

In summary, I grant the Tenants a monetary order in the amount of \$22,900.00 because the Landlords breached section 51 of the Act.

Conclusion

I grant the Tenant a monetary order in the amount of \$22,900.00. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: November 29, 2021

Residential Tenancy Branch