



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNECT

Introduction

This hearing dealt with the tenants' 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.

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 landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenants' application. Both parties confirmed receipt of each other's evidentiary materials, and that they had adequate time to review the materials despite the fact that the landlords was served with late evidence. Both parties confirmed that they did not take issue with the admittance of the late evidence, and confirmed that they wished to proceed with the hearing as scheduled.

Issues(s) to be Decided

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

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 as a fixed-term tenancy September 1, 2016, and ended on July 31, 2019 after the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use on June 16, 2019. Monthly rent was set at \$1,450.00, payable on the first of the month. The tenants paid a security deposit in the amount of \$725.00 for the tenancy, which was returned.

The tenants filed this application as they feel that the landlord had failed to fulfill their obligations after the tenants had moved out in accordance with the 2 Month Notice. The tenants do not feel that the landlord ended up occupying the rental unit as they had discovered that the landlord did not end up retiring from their job, and therefore was still residing and working in a different city. The tenants are requesting compensation equivalent to 12 month's rent for the landlord's failure to comply with section 49 of the *Act*. The tenants feel that nothing has changed in the usage of the home, which the landlord was already using as temporary accommodation prior to the issuance of the 2 Month Notice.

The landlord and their counsel provided the following submissions. The landlord owns two properties, one of which is the rental property, and the other property a recreational cabin. The landlord rented the upper portion to the tenants, while the landlord retained the lower floor which is a one bedroom and one bathroom unit. The landlord would stay in the lower floor unit when visiting friends and family. The lower floor suite was also used by the landlord's family when they were visiting the area.

The landlord is currently single, and has a son who was attending the local college from 2016 to 2018. While attending the college, the landlord's son resided in the lower suite. The son's intention was to continue their education in the same city, but was not accepted into the program. The son later secured a job opportunity that required the son to travel frequently throughout the province.

The landlord's sixtieth birthday was approaching in September 2019, and the landlord was preparing to cut back on the amount of work with their employer. The landlord testified in the hearing that they did not plan on retiring in the traditional sense as the landlord held a senior position with the health authority, an organization they had worked with for seven years. As part of the plan, the landlord had decided that sharing the one bedroom suite with their son was not adequate or feasible, as their intention was to

work remotely from the rental home. The landlord decided the best option was to end the tenancy in order to reclaim use of the entire home.

After the tenants had moved out, the landlord had moved their additional belongings to the rental unit in August 2019. At the time, the landlord's niece was also a student at the local campus, and the landlord allowed their niece to stay at the rental property as there was enough room for the landlord, their son, and the niece. The landlord confirmed that the son and niece paid room and board to cover living costs.

The landlord maintains that they occupied the rental property after the effective date of the 2 Month Notice for a reasonable amount of time after. The landlord would travel and work remotely from their second home, the cabin, and would also spend overnight visits with a good friend.

The landlord testified that from approximately October 1 to October 15, 2019, the landlord's father was hospitalized, and the landlord had temporarily stayed during that two week period with their parents to assist with the landlord's father's recovery.

The landlord was also an avid traveller, and provided a detailed summary of their travels for periods in 2019, which included cities in Canada, the United States, as well as Asia. The last trip was in December 2019 to January 2020 in Asia, and the landlord fell so ill upon their return that they stayed the rest of the month with their family. In early 2020, the landlord's employment drastically changed as they worked for the health authority, which was responsible for many important roles such as protection of the health care professionals in the province due to Covid 19.

In February 2020, the landlord decided to postpone the reduction in work hours due to the public health crisis, and remained as a full-time employee in order to utilize their expertise in assisting with managing the Covid 19 pandemic response.

In March 2020, Covid 19 was deemed a pandemic, and the landlord's role including an instrumental one in setting up the first Covid 19 testing site, as well as vaccinating long-term care facilities and running vaccination clinics. Counsel for the landlord argued that the pandemic was an unexpected and extenuating circumstance that had a significant impact on the landlord's life, and their ability to follow through with their original plan of reduced hours, and working from the rental home. The landlord ultimately decided to move closer to their grandchildren to assist with childcare, which did not take place until the spring of 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.

Residential Tenancy Policy Guideline #2A provides more clarity about the requirements of section 49 of the Act when ending a tenancy for landlord's use.

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.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

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

In this case, the stated purpose for ending the tenancy was for the landlord to occupy the rental unit, which the landlord wanted to reclaim as part of their living space in the entire home. The effective date of the Notice to End Tenancy was August 31, 2019, and the requirement was for the landlord to use the rental unit for this purpose for at least six months.

I have considered the evidence and testimony before me, and I find that the landlord was forthright about the events that took place in 2019 and 2020 following the end of the tenancy. I find that the landlord had clearly established that they maintained multiple homes, two of which they owned, and held a senior position for a health authority in a different city than the rental home. The landlord testified that their intention was to reduce their work hours as they approached retirement, and work remotely from the rental home. The landlord also established that they enjoyed travelling, and did so frequently until 2020 when things changed due to the pandemic.

The requirement was for the landlord to occupy and use the rental beginning within a reasonable period after the effective date, and for at least 6 months. In this case, I am find the landlord to be forthright and credible in their testimony that they had intended to reduce their work hours, and work remotely from the rental home after they had returned from their travels. I find that in January and February 2020, the circumstances for the entire world had changed drastically, and in particular for the landlord because of the landlord's role in their organization. I find that the landlord played a key role in many initiatives that demanded that the landlord stay on full-time, and which prevented the landlord from being able to fulfill their original plans to utilize the rental home to the extent that they anticipated.

I note that although RTB Policy Guideline #2A does require 6 months of occupancy by the landlord, there is no requirement that the landlord must occupy the home full-time, or as their principal residence. The landlord's evidence was that they planned on working and living there, while still enjoying their cabin, and hobbies such as travelling

and visiting friends and family. I find that the landlord had established that this was their plan.

Furthermore RTB Policy Guideline #50 states the following about 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.*

In this case, due to the landlord's specific role and the state of the pandemic, I find that the definition of extenuating circumstances apply in this case. I do not find that the landlord simply changed their mind in terms of occupying the rental unit on a more frequent basis. I find that the landlord had demonstrated that upon their return from their trip in January of 2020, the circumstances had changed drastically, as did the demands on their employment, and role as a senior employee. I am satisfied that if the unforeseen pandemic did not occur, the landlord would have followed through with their intentions to reduce their work, and occupy the rental home on a more frequent basis.

For all these reasons above, I dismiss the tenants' entire application without leave to reapply.

Conclusion

The tenants' entire application is dismissed 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: December 01, 2021

Residential Tenancy Branch