



Dispute Resolution Services

Page: 1

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 compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord ("purchaser"), the purchaser's agent, the tenant, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 32 minutes.

The purchaser confirmed his name, spelling, the rental unit address, and provided his mailing address for me to send a copy of this decision to him after the hearing. The purchaser confirmed that his wife, who is his agent and a co-owner of the rental unit, had permission to speak on his behalf at this hearing. The purchaser's agent confirmed her name and spelling.

The tenant confirmed her name and spelling and provided her email address for me to send a copy of this decision to her after this hearing. She stated that her advocate had permission to speak on her behalf. The tenant's advocate confirmed her name and spelling.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). All hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential consequences and outcomes, to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make decision. Neither party made any adjournment or accommodation requests.

The purchaser confirmed receipt of the tenant's application for dispute resolution hearing package. The tenant's advocate confirmed receipt of the purchaser's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the purchaser was duly served with the tenant's application and the tenant was duly served with the purchaser's evidence.

The tenant confirmed receipt of the former landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated March 27, 2021 ("2 Month Notice"). In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the former landlord's 2 Month Notice.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the spelling of the purchaser's surname. Both parties consented to this amendment during the hearing.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) of the *Act*?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began with the former landlord on June 1, 2015 and ended on May 1, 2021. Monthly rent of \$748.00 was payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant and the former landlord returned this deposit in full to the tenant. A written

tenancy agreement was signed by the former landlord and the tenant. The rental unit is an apartment in a multi-residential apartment building.

The tenant stated the following facts. She vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the notice is May 31, 2021. The reason indicated on the 2 Month Notice was:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The tenant's advocate stated the following facts. The tenant seeks compensation under section 51(2) of the *Act* for twelve months of rent compensation of \$748.00, totalling \$8,976.00, plus the \$100.00 application filing fee. The purchaser did not use the rental unit for the purpose on the 2 Month Notice, so the tenant is entitled to compensation.

The tenant's advocate made the following submissions. She is sorry for the death of the purchaser's mother, as she was not aware of his circumstances. From his evidence, the purchaser indicated that his mother passed away and he purchased the rental unit for his mother. However, he knew before purchasing the property that his mother would not live there. On May 8, 2021, the purchaser set up viewings of the rental unit, prior to the effective date on the 2 Month Notice, which is May 31, 2021.

The purchaser testified regarding the following facts. He disputes the tenant's entire application. He bought the rental unit for his mother to live in. His mother was in the hospital emergency room, but it was a rapid, changing situation. She was ill and then she would show progress. She was transferred to have emergency surgery to save her life, and he had to make that decision. He was pre-approved on February 11, 2021. On February 20, 2021, he viewed suites in a different city. On February 22, 2021, his mother went to see her family doctor, who asked that she be taken to the hospital. Five days later, he viewed suites in the same city as the rental unit. On March 5, 2021, he texted a photograph of his mother in a wheelchair, awake and coherent. On March 6, 2021, he viewed suites in the rental building, but did not view the rental unit. On March 17, 2021, he viewed the rental unit, where the tenant was residing at the time. On March 19, 2021, he sent a photo to his wife, of his mother who was sedated and not awake. On March 20, 2021, he drew up the contract of purchase and sale ("CPS") with the former landlord. In early April 2021, the seller asked to move up the closing date to

the end of April 2021. On April 17, 2021, his mother's surgery went well, and the signs of his mother's health improved.

The purchaser stated the following facts. On April 22, 2021, his mother was eating on her own and her breathing apparatus was removed. He texted a picture of his mother to his wife, and his mother was upright, smiling, and had colour in her face. On May 8, 2021, he had the first showing of the rental unit to prospective tenants. On May 13, 2021, there was a meeting at the hospital regarding his mother's future progress. He was pre-approved and then purchased the rental unit. The entire time his mother was up and down like a "rollercoaster" with her health. His mother suffered a severe infection, surgery was not an option then, and the landlord had to secure his financial stake in the rental unit. He showed the rental unit to prospective tenants, in the event that his mother did not make it. On May 20, 2021, his mother passed away and he provided a death certificate for proof of same. He was looking for a one-level apartment to suit his mother's needs, he wanted something affordable, and his mother's best friend lived nearby, so those are the reasons why he purchased the rental unit for his mother. On June 1, 2021, he rented the rental unit to new tenants because his mother could not live in it and he needed to secure his financial stake. He issued a buyer's notice to seller for vacant possession, dated March 27, 2021. He took possession of the rental unit on May 28, 2021. He did not know that the tenant wanted to remain in the rental unit after he purchased it, he was not the landlord for the tenant's tenancy, and he did not speak to the tenant her wanting to stay in the rental unit, as she did not contact him.

The purchaser's agent testified regarding the following facts. She is not sure when the tenant moved out. When she asked the tenant during this hearing, the tenant told her she vacated on May 1, 2021. The purchaser showed the rental unit on May 8, 2021. The seller of the rental unit wanted to accelerate the closing date, so it was moved up to May 28, 2021. She and the purchaser were unaware that the tenant wanted to have the 2 Month Notice withdrawn and to remain living in the rental unit.

The tenant testified regarding the following facts, in response to the testimony of the purchaser and his agent. She asked the former landlord that when he sold his place, to let the new purchasers know that she wants to stay, depending on how much the rent would be. She does not know the dates of when the above occurred. She received the purchaser's contact address, since it was listed on the 2 Month Notice, but she did not contact him or send correspondence to that address. There was no phone number listed for the purchaser on the 2 Month Notice.

Analysis

This application was filed by the tenant on June 17, 2021. At the time of the tenant's application, it was the tenant's burden of proof, on a balance of probabilities, to prove the requirements below in section 51(2) of the *Act*. I am required to consider that burden, even though this hearing occurred on January 11, 2022. Effective July 1, 2021, this burden switched to the landlord.

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the purchaser does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

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.

It is undisputed that the tenant vacated the rental unit on May 1, 2021, pursuant to the 2 Month Notice. The reason on the 2 Month Notice is undisputed. It is undisputed that the rental unit was purchased by the purchaser, pursuant to a CPS, dated March 20, 2021, with a possession date of May 28, 2021. Neither the tenant, nor her advocate, disputed the above information during this hearing.

The tenant provided a written copy of the buyer's notice to seller for vacant possession, dated March 27, 2021. Neither the tenant, nor her advocate, disputed this document or the contents within it. This notice confirms that the rental unit was sold from the former landlord to the purchaser, pursuant to a CPS, dated March 20, 2021. It states that the rental unit was rented to the tenant. It states that all of the conditions for the purchase and sale of the rental unit have been satisfied or waived. It is signed by the purchaser and his agent. It states that the purchaser asked for vacant possession by May 31, 2021, for the purchaser or a close family member to move into the rental unit, in good faith. It states that a notice to end tenancy had to be issued to the tenant, by the former

landlord, pursuant to section 49 of the Act. It includes the purchaser's address on it and states that this address can be included on a copy of the 2 Month Notice issued to the tenant.

It is undisputed that the purchaser purchased the rental unit for his mother to live in. I accept the purchaser's testimony in this regard. Neither the tenant, nor her advocate, disputed the above information during this hearing.

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.

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances (my emphasis added):

E. EXTENUATING CIRCUMSTANCES

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 am required to consider the above section 51(3) of the *Act*, regardless of whether it is raised by any party during this hearing. I raised the above section to both parties during this hearing. The tenant and her advocate declined to make submissions about it, despite being offered multiple opportunities by me, during this hearing.

I find that the purchaser showed extenuating circumstances prevented him from accomplishing the stated purpose for ending the tenancy, as indicated on the 2 Month Notice.

It is undisputed that the purchaser's mother did not move into the rental unit because she died on May 20, 2021. The purchaser provided a death certificate to confirm same, as evidence for this hearing. Neither the tenant, nor her advocate, disputed the above information or documentary evidence during this hearing. I find that the purchaser's mother's death is an unforeseen event that could not have been predicted or controlled by either party. It is undisputed that the purchaser rented the rental unit to new tenants, as of June 1, 2021.

According to Residential Tenancy Policy Guideline 50, as reproduced above, an example of an extenuating circumstance is specifically given as:

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*

The above example is the exact circumstance in this case. I accept the purchaser's testimony that he purchased the rental unit for his mother to occupy, pursuant to the CPS, dated March 20, 2021. I accept the purchaser's testimony that he wanted a one-level apartment that was affordable and close in location to his mother's best friend. I accept the purchaser's testimony that he issued a buyer's notice to seller for vacant possession on March 27, 2021, to the former landlord, asking to end the tenant's tenancy, pursuant to a 2 Month Notice. The purchaser's mother, qualifies as a close family member (parent), who is entitled to occupy the rental unit, pursuant to the 2 Month Notice. I accept the purchaser's testimony and documentary evidence that the purchaser's mother died before moving in. I accept the tenant's testimony that she vacated the rental unit on May 1, 2021, earlier than the effective date on the 2 Month

Notice of May 31, 2021. I accept the purchaser's testimony that he took possession of the rental unit on May 28, 2021. The purchaser's mother died on May 20, 2021, just 8 days prior to the possession date on May 28, 2021.

I find that the purchaser could not have known at the time of the CPS or the buyer's notice to seller, both issued in March 2021, that his mother would die in May 2021. I accept the affirmed testimony of the purchaser and his agent that the health of the purchaser's mother was improving and declining at different times, that surgery was successful to save her life at one time, and later, surgery was not an option. The purchaser provided a detailed timeline, including dates of his pre-approval, viewings, purchase, and his mother's needs for the rental unit. He also provided a detailed timeline, including dates of his mother's health condition, her visits to her doctors and hospitals, and reports to his wife of his mother's health condition. Neither the tenant, nor her advocate, disputed the above information during this hearing.

I accept the affirmed testimony of the tenant and the purchaser, that the purchaser was not the landlord for the tenant's tenancy. The tenant agreed in her own affirmed testimony, that she did not contact the purchaser and tell him that she wanted to continue living in the rental unit after he took possession as owner. The tenant agreed in her own affirmed testimony, that she had the contact mailing address for the purchaser on the 2 Month Notice, but she did not contact him at his address with any correspondence. I accept the affirmed testimony of the purchaser and his agent, that he did not hear from the tenant, nor was he notified by her, that she wanted to remain living in the rental unit after the purchaser took possession and ownership of the property.

The tenant did not provide any dates of when she said she told the former landlord that she wanted to continue living at the rental unit, despite me asking her repeatedly during this hearing. She merely indicated that she asked the former landlord if she could stay at the rental unit, depending on the amount of rent. The tenant did not produce the former landlord as a witness, nor did she obtain a witness statement from him, as evidence for this hearing, despite me inquiring about it during this hearing.

I accept the purchaser's affirmed testimony that he showed the rental unit to prospective tenants as of May 8, 2021, in the event that his mother might die, since her health was improving and declining at many different times. I find that no one had control over the health of the purchaser's mother, including her own doctors. I find that the purchaser rented the rental unit to new tenants as of June 1, 2021, in order to secure his financial situation with purchasing the rental unit, after his mother had already passed away on

May 20, 2021. I find that the above actions of the purchaser were reasonable, given the extenuating circumstances.

Accordingly, I find that the tenant is not entitled to twelve times the monthly rent of \$748.00, totalling \$8,976.00, from the former landlord or the purchaser. This claim is dismissed without leave to reapply.

As the tenant was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the former landlord or the purchaser. This claim is dismissed without leave to reapply.

Conclusion

The tenant's 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: January 11, 2022

Residential Tenancy Branch