



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51;
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant PV attended the hearing and the landlords were represented at the hearing by their counsel, GS. As both parties were present, service of documents was confirmed. The landlord's counsel acknowledged service of the tenant's application for dispute resolution and the tenant acknowledged service of the landlord's evidence. Both parties stated they had no concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Issue(s) to be Decided

Did the landlords have extenuating circumstances sufficient to prevent them from accomplishing the stated purpose for ending the tenancy as stated in the notice to end tenancy?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The subject rental unit is an entire house that the parties agree was listed for sale two weeks after the effective date of a notice to end tenancy for landlord's use was given to the tenant.

The tenant gave the following testimony. The tenancy began with a previous landlord approximately seven (7) years ago. That landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use ("notice") with an effective date of June 15, 2021. A copy of the notice was provided as evidence. The notice states the purchaser of the rental unit has asked the landlord in writing, to give the notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The names of the purchasers are the landlords named in these proceedings.

The tenant testified that the purchasers of the rental unit (landlords named in these proceedings) listed the rental unit for sale on July 1, 2021 and it was sold on July 26, 2021 to another purchaser. The tenant testified that she spent approximately \$100.00 in purchasing moving supplies and gas. She also spent approximately 8 hours at \$20.00 per hour to clean the rental unit before leaving.

The landlord's counsel gave the following submissions. The landlords are two brothers and their wives. Together, they live in a house with their children and their parents, a total of 10 people. In March of 2021, the landlords entered into a contract to purchase the subject rental property. The plan, according to the landlord's counsel, was for the brothers, their wives, and their children, (8 people) to move into the subject rental property and their parents were to find a rental unit elsewhere. Their current residence was put up for sale in May of 2021. A copy of the listing for their current residence was provided as evidence. The 6,635 square foot, 3-level, 26 room house, built in 2020 was listed at \$2,888,888.00. The 4 bath house also has a 2-bedroom legal suite and a

second 1 bedroom suite in it. The landlord's counsel submits that the house never attracted any potential buyers.

Landlord's counsel submits that the landlords were stuck in a financial crisis, unable to keep their current house while carrying the cost of the rental unit they purchased. The landlords are four working adults with average incomes who had to sell the rental unit. To alleviate their financial stress, the landlords put the rental house up for sale. In evidence, the landlord provided the listing for the subject rental house. It is a 43 year-old, 8 bedroom rancher with a single kitchen and a single bathroom. The property was listed at \$1,145,000.00 and sold within days of being put on the market, on July 23, 2021 according to the listing provided.

According to counsel, the landlords would live in whichever house didn't sell. It turned out the rental house sold, so the landlords remained living in their current residence. Landlord's counsel submits that the landlord's parents stayed in the rental house for 3 months, until October 15th, however he did not explain how this was feasible when the house was sold to a new purchaser on July 23rd.

Landlord's counsel submits that there was always good faith in the landlords' desire to occupy the rental house. There were extenuating circumstances that caused them to not follow through with occupying it, those being financial stress and the financial inability to finance both houses.

Analysis

A tenant may apply for an order for compensation 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, pursuant to section 51(2) of the *Act*.

The parties agree that the landlords, as purchasers of the rental unit, caused the issuance of a notice to end tenancy under section 49, for the landlords or their close family members to occupy the rental unit. The tenant complied with the notice and vacated the rental unit on her understanding that the landlords and their families would occupy it. The parties have provided corroborative evidence to show that the landlords did not occupy the rental unit for six months before selling it. The house was vacated by the tenant on June 15, 2021 and re-sold to a new purchaser on July 26, 2021.

The landlord's counsel submits that the landlords had extenuating circumstances that would make it unreasonable for me to order that they pay the tenant compensation equal to 12 months' rent payable under the former tenancy agreement.

Residential Tenancy Branch Policy Guideline PG-50 [Compensation for Ending a Tenancy] provides guidance to landlords and tenants in addressing issues with respect to section 51(2) of the *Act*. Part E deals with the extenuating circumstances:

E. 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, the landlords submit that the landlords' financial stress and financial inability to finance both houses should be considered the extenuating circumstance that should excuse them from compensating the tenant.

I find that the landlords could have reasonably anticipated that purchasing the rental house before first selling their current house would potentially cause them to be in a precarious financial position. I do not find their lack of planning for the possibility of

financing two houses to be outside their own control. A reasonable observer would perceive that the landlords took a calculated risk in buying the rental property without the means to finance it while simultaneously financing their own household.

The fact that they could not sell their existing residence cannot be considered an extenuating circumstance because the landlords had the ability to lower the price of their existing residence or take other meaningful measures in order to achieve their stated purpose of occupying the newly purchased rental unit. Landlord's counsel did not submit any evidence of any of those steps being taken, simply saying the current residence was put on the market where it remained unsold.

Second, were there any extenuating circumstances outside the landlords' reasonable control? I find that there were none. Landlord's counsel did not present any unanticipated factors in the real estate market or personal circumstances which preventing the landlords from occupying the rental house. The only argument for not occupying the rental unit for a period of six months was simply because the landlords could not afford both houses. To be clear, I find the situation the landlords found themselves in was within their reasonable control and could be reasonably anticipated. I find there were no extenuating circumstances preventing the landlords from using the rental unit for the stated purpose of occupying it for at least six months. Consequently, I find the tenant is entitled to compensation equivalent to twelve times monthly rent [\$1,715.00 x 12 = \$20,580.00] pursuant to section 51(2) of the *Residential Tenancy Act*.

The tenant seeks an additional \$100.00 for moving expenses and \$160.00 for missing work to vacate the rental unit. The tenant did not provide any receipts for the expenses incurred or invoices to show her daily earnings. I find the tenant has provided insufficient evidence to satisfy me the value of her losses and I dismiss this portion of the tenant's application.

As the majority of the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$20,680.00**. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: January 24, 2022

Residential Tenancy Branch