



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on July 22, 2021 (the “Application”). The Tenants applied for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property and reimbursement for the filing fee.

The Tenants appeared at the hearing. The Landlord appeared at the hearing with Legal Counsel. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlord and Legal Counsel advised at the outset of the hearing that they had a witness on standby in case they were needed. During the hearing, the Landlord and Legal Counsel asked if they could call the witness and I allowed the Landlord to do so. The Landlord and Legal Counsel advised that they tried to reach the witness a few times and left a voice message for the witness. The witness was unavailable and therefore I did not hear from the witness during the hearing.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony and submissions of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought \$19,699.20 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the “Act”) based on the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 22, 2021 (the “Notice”).

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The parties agreed the tenancy ended May 31, 2021. The parties agreed rent at the end of the tenancy was \$1,641.60 per month.

The Notice was submitted as evidence. The Notice had an effective date of May 31, 2021. The grounds for the Notice were that the rental unit would be occupied by the child of the Landlord or Landlord's spouse.

There is no issue that the Landlord re-rented the unit to a non-family member in July of 2021 and therefore did not follow through with the stated purpose of the Notice because the Landlord acknowledged this. The issue is whether extenuating circumstances prevented the Landlord from following through with the stated purpose of the Notice.

The Landlord and Legal Counsel submitted as follows. The extenuating circumstances which prevented the Landlord from following through with the stated purpose of the Notice relate to the Landlord's adult son, G.M. The Landlord rents a home for G.M. to live in. The rent for the home is \$5,000.00 per month. G.M. has lived at the home since mid 2020 and continues to live there. Prior to living in the home, G.M. lived in a duplex. G.M. had to move from the duplex due to health issues which started in 2018. The home is large, spacious and in a quiet neighbourhood which alleviates G.M.'s health related symptoms. G.M.'s health seemed to improve over the eight months prior to the Notice being issued. The Landlord thought it was a good time for G.M. to move into the rental unit. However, G.M.'s health issues resurfaced and their doctor said the instability caused by moving would be detrimental to G.M.'s health. Given this, G.M. did not move into the rental unit as planned.

In response to questions, the Landlord and Legal Counsel stated as follows. G.M. had to move from the duplex because they thought their neighbour was hitting the walls such that police attended over this issue. The rental unit is an apartment on the first floor of the building and has neighbours on both sides. The Landlord “absolutely” had a discussion with G.M.’s doctor about G.M. moving into the rental unit. The first time the Landlord talked to G.M.’s doctor about G.M. moving was in February or March of 2021.

Legal Counsel submitted that the health issues of G.M. are difficult to predict. Legal Counsel submitted that it would be unjust to require the Landlord to compensate the Tenants pursuant to section 51(2) of the *Act*. Legal Counsel relied on a prior RTB case submitted as evidence.

The Landlord submitted the following relevant documentary evidence:

- Tenancy agreement
- Notice of Rent Increase
- Notice
- Signed letter from G.M.’s doctor dated January 17, 2022
- Affidavit of G.B.
- Prior RTB decision dated August 16, 2021
- Written submissions of Legal Counsel

The doctor’s letter dated January 17, 2022 states in part the following:

I highly recommend that [G.M.] remain in his current location, a single family home of approximately 4000 square feet. Moving to an apartment of 630 square feet would be difficult for him given his past experience living in a duplex. He was moved from the duplex due to paranoia about the occupant of the other half of the duplex. His father moved him to a single family residence. Moving into an apartment would not be good for his mental health and he would likely have issues with respect to the other tenants in the building...

The Affidavit of G.B. states in part the following:

11. I have been informed by the Landlord and do verily believe that the Landlord’s son G.M. suffers from health issues that prevented the Landlord’s son from occupying the rental unit.

The Tenants made the following submissions. It was foreseeable that G.M. would experience health issues in relation to moving from a 4500 square foot house to a 600 square foot apartment with neighbours on both sides. The Landlord did not discuss G.M. moving with G.M.'s doctor until after the Notice was issued and should have prior to the Notice being issued to ensure G.M. was in a condition to move. There is nothing in the doctor's letter about G.M. improving such that they could move into the rental unit. The doctor's letter was written in 2022. There is no documentation from the Landlord about G.M.'s current lease or to show that G.M. intended to move into the rental unit. For example, there is no evidence showing G.M. gave notice ending their tenancy at their current home. Others in the rental unit building have said the Landlord has issued notices to end tenancy for G.M. to move into other units in the building in the past.

The Tenants submitted that the RTB decision provided by the Landlord is distinguishable from this matter.

The Tenants submitted the following relevant documentary evidence:

- Notice
- Text messages
- Photos
- Signed letter from J.B.
- Emails
- Timeline of events
- Tenancy agreement
- Notice of Rent Increase

In reply, Legal Counsel and the Landlord stated as follows. This is the first they are hearing of the allegation that the Landlord has ended other tenancies in the rental unit building for the purpose of G.M. moving in. The Landlord did not want to take steps to move G.M. into the rental unit until they knew the Tenants would vacate.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(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 the landlord or purchaser, as applicable, does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been 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 applicable, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

There is no issue that the Landlord re-rented the unit to a non-family member in July of 2021 and therefore did not follow through with the stated purpose of the Notice. The issue is whether extenuating circumstances prevented the Landlord from following through with the stated purpose of the Notice.

The Landlord has the onus to prove extenuating circumstances. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Landlord takes the position that G.M.'s health issues prevented the Landlord from following through with the stated purpose of the Notice. The Landlord states that G.M.'s health improved, they issued the Notice and then G.M.'s health declined such that they could not move into the rental after the Tenants moved out. The Tenants disagree with the Landlord's position. Therefore, I have focused on the documentary evidence before me which supports each position.

The Notice was issued in January of 2021 with an effective date of May 31, 2021 meaning the extenuating circumstances which prevented the Landlord from following through with the stated purpose of the Notice had to have occurred between January of 2021 and within a reasonable period after May 31, 2021.

Based on the testimony of the Landlord, I find G.M. has experienced health issues since 2018, long before the Notice was issued. Based on the testimony of the Landlord and doctor's letter, I find G.M. experienced health issues which affected where G.M. could live prior to the middle of 2020 and prior to the Notice being issued. I find the health issues of G.M. which affected where G.M. could live did not arise between January of 2021 and within a reasonable period after May 31, 2021, the relevant period. G.M.'s health issues pre-existed the Notice being issued.

The Landlord testified that G.M.'s health issues improved, the Notice was issued and then G.M.'s health declined. None of the documentary evidence before me supports that G.M.'s health improved prior to the Notice being issued or that it declined between January of 2021 and within a reasonable period after May 31, 2021.

The only documentary evidence before me relating to G.M.'s health are the doctor's letter and Affidavit of G.B.

The doctor's letter does not support the Landlord's position because it simply shows that in January of 2022 G.M. could not move into the rental unit. It is not relevant that G.M. could not move into the rental unit more than seven months after the effective date of the Notice. Again, the issue is whether G.M.'s health improved prior to the Notice being issued in January of 2021 and declined within a reasonable period after May 31, 2021, which is not addressed in the doctor's letter. The Landlord and Legal Counsel

suggested that the Landlord was told by G.M.'s doctor that G.M. could not move into the rental unit which is why the Landlord did not follow through with the stated purpose of the Notice, yet this is not supported by, or addressed in, the doctor's letter.

The Affidavit of G.B. is not compelling evidence supporting the Landlord's position. Paragraph 11 of the Affidavit is simply based on what the Landlord told G.B. I acknowledge that G.B. states they believe the information; however, there is no compelling basis outlined for this belief. I also note that the Affidavit does not support that G.M.'s health improved prior to the Notice being issued and declined within a reasonable period after May 31, 2021.

In the absence of further evidence to support the testimony of the Landlord that G.M.'s health improved prior to the Notice being issued and declined within a reasonable period after May 31, 2021, I am not satisfied the Landlord has proven extenuating circumstances.

Given the above, I find section 51(2) of the *Act* applies and the Landlord must pay the Tenants 12 times the monthly rent being \$19,699.20.

As the Tenants were successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$19,799.20 and I issue the Tenants a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenants are entitled to \$19,799.20 and I issue the Tenants a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 18, 2022

Residential Tenancy Branch