



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Landlord KG and tenants AB (the tenant) and RB attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Are the tenants entitled to:

1. A monetary order in an amount equivalent to twelve times the monthly rent?
2. An authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on March 01, 2018 and ended on July 04, 2021. Monthly rent was \$1,200.00, due on the first day of the month. The landlord returned the security deposit of \$600.00 and the pet damage deposit of \$600.00.

The landlord purchased and obtained possession of the rental unit on December 18, 2021. The tenants rented the basement unit.

Both parties agreed a Two Month Notice to End Tenancy for Landlord's Use (the Notice) was served on May 25, 2021. It states that the rental unit will be occupied by the landlord or the landlord's spouse and the effective date was July 31, 2021. The landlord intended to occupy the rental unit with her aunt and co-owner.

The tenants are claiming compensation in the amount of \$14,400.00 (12 months of monthly rent payment of \$1,200.00) because the landlord did not move in and occupy the rental unit for six months after July 31, 2021.

The landlord claims that extenuating circumstances prevented her from occupying the rental unit for six months after July 31, 2021.

The landlord affirmed that she had back pain before she served the Notice, she started suffering worse back pain around the first week of June 2021 and her physician instructed her not to perform physical activities and to have someone help her with daily life activities. The landlord stated that her aunt's health also deteriorated. The landlord received the tenant's notice to end tenancy on June 24, 2021 indicating that the tenancy would end on July 04, 2021.

The landlord testified that her health condition further deteriorated, and her doctor instructed her to rest for 1,5 month. Later the landlord said her doctor instructed her to rest until August 30, 2021.

The doctor's referral dated July 08, 2021 states: "Dear RMT, Please see this patient for ongoing neck, shoulder and back pain since MVA." The doctor's letter dated September 02, 2021 says: "This letter is to certify that the landlord was assessed in this office and was/is unable to attend work due to illness/injury from July 10, 2021 to September 14, 2021."

The landlord affirmed she could not move to the rental unit because of her deteriorating health condition and that she could not afford to maintain the rental unit empty because she had to pay the mortgage. The landlord lived with her relatives in another city from May to December 2021, when she moved overseas.

I inquired the landlord why she did not hire a moving company. The landlord stated that she could not move to the rental unit because she needed help of her relatives to cook and drive her to medical appointments.

The tenant testified the landlord visited the rental unit before serving the notice in May 2021. The tenant said that the landlord's fiancée used to drive the landlord to her medical appointments. The tenant affirmed the landlord's fiancée could continue to help the landlord to cook and to drive the landlord to her medical appointments. The landlord stated her fiancée does not help her and that he lives in another city. The landlord testified she only sees her fiancée once or twice per week, or once every 10 days.

The tenant said that on July 04, 2021 there was no visible indication that the landlord's health deteriorated.

The landlord listed the rental unit around July 16, 2021 and re-rented it on August 01, 2021 for \$1,450.00 per month.

The landlord affirmed that when she decided to re-rent the unit she tried to offer it to the tenants but she was not able to communicate with them. The tenant stated that her phone number and email did not change, and the landlord did not contact her to offer the rental unit for a new tenancy.

The tenant testified the landlord returned the pet damage deposit on the same day she listed the rental unit asking for monthly rent of \$1,450.00. The tenant believes the landlord served the Notice to re-rent the suite at a higher rent.

The tenant said the main unit was empty when the landlord purchased the rental unit and the landlord could have moved to the main unit. The landlord affirmed she did not need the space of the main unit and in May 2021, when she served the Notice, the main unit was tenanted.

The landlord submitted a letter dated September 02, 2021 from the tenant of the main unit: "I hereby confirm that the owner of this property and her relatives had gotten the backyard and basement maintenance done in the second week of July as part of getting the place move-in ready. But as per my conversation with her, due to her poor health conditions she could not move into the property."

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As the landlord claims that extenuating circumstances prevented her from occupying the rental unit for six months after July 31, 2021, the onus is on the landlord to prove the extenuating circumstances.

Sections 49(2) and (3) of the Act state:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[...]

(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(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

Section 51(3) states the landlord may be excused from paying the tenant the amount required by section 51(2) if extenuating circumstances prevented the landlord 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 Branch Policy Guideline 50 states:

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

(emphasis added)

The commonality of the examples outlined in the guideline for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority or control over the event.

The tenant disputed the landlord's testimony that extenuating circumstances prevented her from moving to the rental unit. I find the landlord's testimony was vague and the tenant's testimony was more convincing, detailed and credible.

The tenant's undisputed testimony about the landlord returning the pet damage deposit on the same day the landlord listed the rental unit asking for a higher rent was convincing. The landlord did not present evidence to prove that she tried to contact the tenants to offer the unit when she decided to re-rent it. I find these two points undermine the credibility of the landlord's claim for extenuating circumstances, as these points indicate the landlord intended to re-rent the unit at a higher rent.

I find the doctor's referral dated July 08 and the letter dated September 02, 2021 do not prove, on a balance of probabilities, that the tenant could not occupy the rental unit. The landlord did not explain why she could not hire a moving company. The landlord's testimony about her fiancée not being able to help her was not credible. The landlord did not rebut the tenant's testimony about the landlord's health condition on July 04, 2021. The landlord did not present specific facts that happened after she served the Notice on May 25, 2021 and before the Notice's effective date on July 31, 2021 that did not allow her to occupy the rental unit and the landlord could not anticipate.

The landlord did not explain when she started suffering back pain or when she suffered an accident ("MVA").

Thus, I find the landlord failed to prove, on a balance of probabilities, that extenuating circumstances did not allow the landlord to move to the rental unit and occupy it from August 01, 2021 to February 28, 2022, the six-month period after the Notice's effective date.

As such, per section 51(2) of the Act, the tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenant a monetary award in the amount of \$14,400.00 (12 x \$1,200.00).

As the tenants were successful, I authorize the tenants to recover the filing fee in the amount of \$100.00.

In summary, the tenants are entitled to a monetary award in the amount of \$14,500.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenants a monetary award in the amount of \$14,500.00.

The tenants are provided with this order in the above terms and the landlord must be served with this order. Should the landlord 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: February 23, 2022

Residential Tenancy Branch