



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FFT

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- Compensation equivalent to 12 months rent pursuant to s. 51 of the *Act*;
- Monetary compensation pursuant to s. 67; and
- Return of their filing fee pursuant to s. 72.

P.L. and Y.X. appeared on their own behalf as Tenants. G.L. appeared on his own behalf and on behalf of the other named Landlords. The Tenant’s called two witnesses, E.D. and V.B..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Tenants advised that they served the Landlord with the Notice of Dispute Resolution and their evidence by way of registered mail sent on October 30, 2021. The Landlord acknowledges receipt of the same. I find that the Tenants’ application materials were served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Landlord received the Tenants’ application materials on November 4, 2021.

The Landlord indicates that he served his responding evidence on the Tenants by way of registered mail. The Tenants acknowledge receipt of both evidence packages but noted that one of the packages had been sent to the post office and that it was received on February 4, 2021. The Landlord did not provide registered mail receipts.

When asked whether there were any objections to the evidence of February 4, 2021, the Tenant consented to its entry as it was largely a repetition of the Landlord's previous evidence. Based on the Tenants acknowledged receipt of both evidence packages and the Tenants' consent to the inclusion of both packages, I find that the Tenants were sufficiently served with the Landlord's responding evidence pursuant to s. 71(2) of the *Act*.

Issue(s) to be Decided

- 1) Are the Tenants entitled to compensation equivalent to 12 months of rent?
- 2) Are the Tenants entitled to monetary compensation?
- 3) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants had been long-term tenants, living there for approximately 18 years;
- The Tenants vacated the rental unit on July 31, 2021 and conducted the move-out inspection on August 1, 2021;
- Rent of \$765.00 was due on the 24th day of each month.

It is unclear whether there was a written tenancy agreement. None was put into evidence by the parties.

The Landlord indicated that the Tenants were served with a Two-Month Notice to End Tenancy on June 1, 2021 (the "Two-Month Notice"). The Landlord confirmed that the Two-Month Notice was issued on the basis that the residential unit would be used for their personal use. The Tenants confirmed the details of the Two-Month Notice. The parties did not put the Two-Month Notice into evidence, however, the Tenants added a proof of service form evidencing service of the Two-Month Notice.

G.L. said that he co-owned the property with the other listed respondent Landlords. The co-owners, Y.L. and T.L., are G.L.'s elderly parents. The subject rental unit, when it was occupied by the Tenants, was a ground floor unit and the upper floor of the residential

property was occupied by Y.L. and T.L.. G.L. confirmed that he lives a separate house in a neighbouring community.

G.L. described the ailing health of his parents and placed particular focus on the declining health of his mother, Y.L.. Based on submissions at the hearing, Y.L. was admitted into hospital twice in the spring of 2021 and was diagnosed with terminal cancer in April 2021.

G.L. says that the Tenants were served with the Two-Month Notice because of the declining health of his parents. G.L. indicated that the Two-Month Notice was issued with the intention that his parents would move into the ground floor rental unit and either he or his sister would move into the upper floor such that they could help look after their parents. The ground floor unit was preferable to his parents as there were less stairs.

As long-term tenants, P.L. and Y.X. were aware of the Landlords' ailing health and knew that Y.L. had been admitted into hospital. When served with the Two-Month Notice, P.L. stated that the rationale was entirely reasonable and they did not file to dispute the notice. As mentioned above, the Tenants vacated the rental unit on July 31, 2021.

It was some months later that the Tenants discovered that the residential property had been listed for sale. G.L. confirmed that house was put on the market in September 2021 and was sold in October 2021.

G.L. explains that the house was sold due to the increased and unexpected medical costs associated with his mother's care. G.L. says that Y.L. can no longer care for herself and that his father is not capable of caring for Y.L.. In the Landlord's written submissions, there is mention of an incident in which Y.L. is said to have slipped and injured herself.

G.L. says that his parents moved in with him and that they continue remain in his care. G.L. further states that he is no longer working such that he can devote his time to the care of his parents.

The Tenants argue that the very basis for issuing the Two-Month Notice was that either G.L. or his sister would move into the residential property to provide care for Y.L. and T.L. and that the parents would move into the ground floor rental unit.

The Tenants called E.D. as a witness. E.D. is the child of a neighbouring property owner. E.D. lives elsewhere but visits her elderly parents on something of a frequent basis. E.D. indicated in her evidence that she had a conversation with G.L. in the spring of 2021. E.D. says that in her conversation, G.L. indicated to her that it was his parents' intention to sell the property, with the sale to occur sometime in the fall of 2021. E.D. specifically denied that G.L. told her on during their conversation that someone would be moving into the residential unit as described by the Landlords.

In G.L.'s telling of the conversation with E.D., he stated that he speculated that a sale may be necessary given his parents health but denies stating that the intention was to sell in the fall.

E.D. had a further conversation with G.L.'s sister. G.L. says his sister lives in another country. In her conversation with the sister, E.D. stated that she was told that the intention was to renovate the rental unit to accommodate Y.L. and T.L.. E.D. says that she asked the sister whether they would install a stair lift and the sister stated that it was her brother's responsibility to attend to those matters. E.D. remarked on the abrupt manner in which the sister gave her response to the stair lift question and that the conversation promptly ended. E.D. later witnessed the sister and her partner clear out furniture and belongings from the upper floor of the residential property. She further stated that on July 25, 2021 she was celebrating her mother's birthday when she heard and witnessed the carpets being cleaned on the upper floor of the residential property.

E.D. stated that after the Tenants vacated the rental unit, it did not appear that the upstairs or downstairs was occupied at all. In a statement from E.D. dated October 28, 2021, E.D. describes that the lawn remained uncut for some time in August 2021 and that it was only cut until just prior to labour day long weekend. On the labour day weekend, E.D. observed a man enter the residential property with a camera and that the man informed her that the house was being listed for sale.

E.D. and her mother went the open house for the property. From E.D.'s perspective, no work had been done at the property other than carpets being cleaned and the walls painted.

The Tenants describe going through a significant degree of stress during July 2021. P.L. stated that by mid-July 2021, the Tenants were still uncertain with respect to their next rental accommodation. It appears that they had secured another place but that that fell through in July 2021 due to a disagreement with the other Landlord. V.B. was called

to testify and indicated that Y.X. was stressed because there was little time to find alternate accommodations.

The Tenants provide a monetary order worksheet and explain that the Landlords conduct resulted in damages in the amount of \$9,605.00. According to the Tenants, they seek \$1,000.00 due to the Landlord's ending the tenancy in bad faith, \$2,000.00 due to the stress caused by leaving the rental unit, \$2,000.00 for the cost of moving, and \$4,605.00, which is described as the difference between the rent they currently pay with the rent they would have paid had they remained in the rental unit from August 1, 2021 until when the residential property was sold in October 2021.

The Tenants provide no receipts or accounting with respect to their moving expenses and indicate that they had friends assist them in moving. It appears that their failed tenancy with the other rental caused the Tenants to move twice in July 2021.

G.L. argues that I should dismiss the Tenants claim for monetary compensation. He denies bad faith on the part of the Landlord, indicates that moving is generally stressful, and that the Two-Month Notice was properly issued such that the tenancy was properly ended and agreed to by the Tenants.

G.L. further argued that the Tenants had agreed to relinquish any claim against the Landlords following their move-out inspection on August 1, 2021. The specifics of the dispute during the move-out inspection are not relevant, however, it appears that there was a disagreement between the parties with respect to the state of the rental unit. The Tenants say that they agreed that they would abandon their claim to the security deposit and that this was not a general release from liability as alleged by G.L.

Analysis

The Tenants seek compensation under sections 51 and 67 of the *Act*.

Pursuant to s. 51(2) of the *Act*, where a landlord has issued a notice to end tenancy pursuant to s. 49 a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement if the Landlord cannot establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

Policy Guideline #50 states that once a notice is issued under s. 49 the purpose stated in the notice must be accomplished and cannot be substituted for another purpose even if the separate purpose would have been valid grounds for ending a tenancy under s. 49.

Pursuant to s. 52(3) of the *Act*, a landlord may be excused of a compensation claim under s. 51(2) if there are extenuating circumstances which prevent the landlord from carrying out the stated purpose set out under the notice issued under s. 49.

The facts in the present dispute respecting the sale of the residential property are not in dispute. The Landlord admits that the residential property was listed for sale in September 2021 and was sold in October 2021. The Landlord further admits that the Two-Month Notice was issued on the basis that Y.L. and T.L. would occupy the rental unit. This did not occur. Indeed, based on the evidence provided by the parties, it does not appear the parents ever moved into the rental unit.

E.D. provided firsthand evidence that was not contradicted by the Landlord that it appeared the residential property was entirely vacant after the Tenants left the property on July 31, 2021. E.D. further indicated that G.L. told her in the spring of 2021 that the house would be sold in the fall of 2021. It was sold in the fall of 2021.

I find that the Landlord has failed to establish that Y.L. and T.L. ever moved into the rental unit. I further find that the house was sold in October 2021, which is in direct contravention of the stated purpose in the Two-Month Notice as confirmed by the parties at the hearing.

I pause to consider the Landlord's argument that the Tenants agreed not to pursue further claim against the Landlords. There is no evidence to support such a wide-ranging release of the Tenants' rights to claim compensation under the *Act*. It is much more plausible that the Tenants agreed to abandon any claim to their security deposit following the parties' disagreement during the move-out inspection. I place no weight in the Landlord's argument of a general release by the Tenants not to make further claim as the Landlord's argument is entirely unsubstantiated.

G.L. argues that the health of his mother deteriorated in August 2021 such that their plans changed and that she moved in with him. G.L. did not provide specific submissions on whether these were extenuating circumstances as contemplated by s. 51(3).

Policy Guideline #50 provides the following guidance with respect to what are considered 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.

The key aspect of this guidance and the language from s. 51(3) is that the extenuating circumstance must prevent the landlord from carrying out the purpose stated in the notice issued under s. 49. That is not the case here. The health of Y.L. and T.L. were known before the Two-Month Notice was issued. Indeed, the entire purpose of having the Tenants leave was so that the parents could occupy the rental unit and either G.L. or his sister could move to the property to care for the parents. That never occurred and both parents are still alive.

I find that there are no extenuating circumstances that prevented the Landlords from fulfilling their purpose as stated in the Two-Month Notice. Accordingly, the Tenants are entitled to compensation under s. 51(2). There is no dispute that the monthly rent due

when the tenancy ended was \$765.00. The total compensation is, therefore, \$9,180.00 under s. 51(2).

The Tenants make further claims for monetary compensation. Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Under the present circumstances, the Tenants have failed that to establish that the Landlord failed to comply with the *Act*, the tenancy agreement, or the regulations. The Landlord issued a notice under s. 49, the Tenants accepted the end of the tenancy and moved-out. I accept that the Tenants experienced stress when leaving the rental unit. However, the Tenants accepted the end of the tenancy pursuant to the Two-Month Notice.

The Tenants argue the Two-Month Notice was issued in bad faith. With respect, questions of bad faith are only relevant if the Tenants' disputed the Two-Month Notice. The Tenants did not file to dispute the Two-Month Notice and accepted the end of the tenancy. Further, the entire purpose of the penalty imposed on landlords under s. 51(2) is to ensure that tenants are compensated when a notice under is issued under s. 49 and the purpose is not fulfilled by the landlord. I have already found the Tenants are entitled to that compensation.

I find that the Tenants have failed to establish their claim under s. 67 of the *Act*. Accordingly, this portion of their application is dismissed without leave to reapply.

Conclusion

The Tenants are entitled to compensation pursuant to s. 51(2) of the *Act*. The Landlords shall pay **\$9,180.00** (\$765.00 x 12) to the Tenants.

The Tenants claim for additional monetary compensation is dismissed without leave to reapply.

As the Tenants were partially successful in their application, I find that they are entitled to the return of their filing fee. Accordingly, I order pursuant to s. 72(1) that the Landlords pay **\$100.00** to the Tenants for their filing fee.

It is the Tenants' obligation to serve the monetary order on the Landlords. If the Landlords do not comply with the monetary portion of this order, it may be filed by the Tenants with 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 09, 2022

Residential Tenancy Branch