



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNECT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for compensation related to a Notice to End Tenancy and for the recovery of the filing fee for this application. The matter was set for a conference call.

Both the Tenants, the Landlord and Landlord’s spouse, attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss pursuant to section 51 of the *Act*?
- Are the Tenants entitled to the recovery of the filing fee for these proceedings?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on September 1, 2019, that rent in the amount of \$1,600.00 was to be paid by the first day of each month, and that at the outset of the tenancy, the Tenants had paid an \$800.00 security deposit and a \$400.00 pet damage deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

All parties agreed that the Landlord initially served the Tenants a Two Month Notice to End Tenancy for the Landlord's Use of the Property on February 1, 2021. The Notice indicated that the Tenants were required to vacate the rental unit as of April 1, 2021. The reason checked off by the Landlord within the Notice was as follows:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent, child of that individual's spouse).*
 - *The father or mother of the landlord or landlord's spouse*

All parties agreed that the move-out date of the February 1, 2021 Notice was incorrect, and that the Landlord issued a second Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") on February 5, 2021, to correct this error. The second Notice recorded that the Tenants were required to vacate the rental unit as of April 30, 2021. The reason checked off by the Landlord within the Notice remained the same and was as follows:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent, child of that individual's spouse).*
 - *The father or mother of the landlord or landlord's spouse*

Both parties agreed that the Tenants issued 10-day written notice to end their tenancy earlier than the end of the tenancy date indicated on the Landlord's Notice as permitted under section 50 of the *Act*. They vacated the rental unit in accordance with their notice on February 28, 2021. The Landlord and Tenants agreed that the security and pet damage deposits were dealt with in accordance with the *Act* at the end of this tenancy.

Both the Landlord and the Tenants submitted a copy of the February 1, 2021, and the February 5, 2021, Notices into documentary evidence.

The Tenants testified that in May 2021, they found out that Landlord had moved in a new renter into the rental unit. The Tenants testified that it is their understanding that the Landlord's father never moved into the rental unit, and they are requesting compensation for the rental property not being used as indicated on the Notice.

The Landlord testified that they had initially moved their father into the rental unit on March 5, 2021, but that their father had become abusive towards them almost immediately after moving in, so they had to force their father to leave for their own safety. The Landlord testified that their father moved out of the rental unit on April 21, 2021 and agreed that they had re-rented the rental unit as of May 1, 2021.

The Landlord submitted that they should be excused from the requirement to use the rental unit for the stated purpose on their Notice for at least six months due to their father's abusive behaviour. The Landlord testified that they have a long history of family abuse, suffered at the hand of their father, stating that they have been under professional care due to this abuse for several years. The Landlord submitted three affidavits and one doctor's note from physicians whose care they had been under into documentary evidence.

The Landlord testified that their relationship with their father had improved before issuing the Notice. So, when their father expressed a desire to live in their home to be closer to them and their grandchildren, they decided to let them move in and issued the Notice to end tenancy to the Tenants. The Landlord also testified that their father is also a co-owner of the rental property, so as an owner, the father had the right to live in the rental unit.

The Landlord testified that a few days after issuing the Notice to end the tenancy, they had second thoughts about allowing their father to move in, so they approached the Tenants to withdraw the Notice but that the Tenants had declined. The Landlord submitted a copy of a part of a text message from the Tenants into documentary evidence.

The Landlord's Spouse testified that the Landlord had advised them that their father had called the Landlord names and pushed past them to get things, physically pushing them

out of the way in the process. The Landlord submitted a written statement from this witness into documentary evidence.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties that the Landlord issued a Notice to end this tenancy for their personal use of the property, indicating their intention to move their father into the rental unit. Both parties also agreed that the Tenants moved out of the rental unit in accordance with the *Act* and the Landlord's Notice to end the tenancy.

Before me, I have an application pursuant to section 51(2) of the *Act*. The Tenants have claimed that the Landlord's father never moved into the rental unit and that the Landlord had not issued the Notice in good faith. Section 51(2) of the *Act* states the following:

Tenant's compensation: section 49 notice

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.

In this case, the Landlord has agreed that they did not use the property for the stated purpose for the minimum required time, of six months, as set out in section 51(2b) of the *Act*. Therefore, I find that the Landlord, by their own admission, breached section 51(2) of the *Act*.

However, before address the excuse for the breach provided by the Landlord, I must address the Tenants claim that the Landlord never used the rental unit for the state

purpose on the Notice, even for the short term that the Landlord claims they had allowed their father to reside in the rental unit.

The Landlord testified that they had used the rental unit for the reason stated on their Notice as their father had moved into the rental unit on March 5, 2021.

The Landlord and Tenants have offered conflicting verbal testimony regarding the Landlord's use of this rental unit at the end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim normally has the burden to provide sufficient evidence over and above their verbal testimony to establish their claim. However, in this case, even though the Tenants are the claimants in this dispute, section 51 of the *Act* places the burden of proof on the landlord, stating the following:

Tenant's compensation: section 49 notice

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 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.*

Section 51(2) of the *Act* requires that the Landlord must prove they used the rental unit for the stated purpose on their Notice to end the tenancy. The Resident Tenancy Policy Guideline # 50 provides further guidance, stating the following:

"The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended."

Therefore, it is the Landlord, in this case, that must provide sufficient evidence over and above their verbal testimony that establishes they used the rental unit for the stated purpose on their Notice to end this tenancy.

The Landlord has provided the testimony of their spouse, three affidavits from physicians, and one Doctor's Notice to support their claim in these proceedings; that their father did move into the rental unit on March 5, 2021; however, they had to force their father to move out on April 21, 21021, after living in the rental unit for 48 days, because the father had become abusive.

First, I reviewed the Landlord's Spouse's verbal testimony and written statement, and although I find that their written statement indicates that the Landlord's father did move into the rental unit, I find that the Landlord's Spouse statements may be biased, as they may have a vested interest in the outcome of this case due to the shared household between the Landlord and their Spouse. Therefore, I cannot rely on the Landlord's Spouse's testimony alone to substantiate the Landlord's claim made during these proceedings.

Next, I reviewed the three affidavits from physicians submitted into documentary evidence, and I noted that only two of these three documents made mention of the Landlord's father. On closer review of these two physicians' affidavits that mention the Landlord's father, I noted find that neither of these physicians provided a first-hand confirmation that the Landlord's father had moved into the rental unit between March 5, 2021, to April 21, 2021. Therefore, I find that the three affidavits from physicians do not substantiate the Landlord's claim that their father resided in the rental unit between March 5, 2021, to April 21, 2021.

I have also reviewed the Doctor's Note submitted into evidence by the Landlord and find that this document does not mention the Landlord's father or the rental unit.

Additionally, it is too much of a coincidence to let it stand without note that the new renter moved into this rental unit on May 1, 2021, the day immediately following what would have been the end of the Notice period for this tenancy, as indicated on the Notice issued by the Landlord.

Overall, after reviewing the testimony of the Landlord, the Landlord's spouse and the documentary evidence provided, I find that there is insufficient evidence before me to prove, to my satisfaction, that the Landlord's father had moved into the rental unit at the

end of this tenancy. Consequently, I find that the Landlord breached section 51(2) of the *Act* by establishing that they used the rental unit for the stated purpose on their Notice to end the tenancy.

Pursuant to section 51(3) of the *Act*, a landlord found to be in breach of section 51(2) may argue extenuating circumstances and offer and reason that my excuse them from having to pay the additional compensation. Therefore, before I can render a final decision on the Tenants' claim for compensation, I must consider the Landlord's excuse. Section 51(3) of the *Act* states the following:

Tenant's compensation: section 49 notice

51(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.*

The Landlord testified that they should be excused from having to pay the additional compensation due to their father's abusive behaviour towards them while living in the rental unit between March 5, 2021, to April 21, 2021, which caused them to abruptly end their living arrangement with their father for their and their family's safety.

I have carefully considered the excuse offered by the Landlord, and I find that this excuse of an unsafe living arrangement rests upon the Landlord's ability to prove that their father did move into the rental unit between March 5, 2021, and April 21, 2021. Which, as stated above, the Landlord has failed to prove. Therefore, I find that the Landlord's request to be excused due to extenuating circumstances fails, as the Landlord has not proven that their father ever resided in the rental unit after this tenancy ended.

As the Landlord has been found to be in breach of section 51(2a) of the *Act*, and the Landlord's request to be excused due to extenuating circumstances pursuant to section

51(3) of the *Act* has failed, I must award the Tenants their monetary claim for compensation due to the Landlord breach of the *Act*.

Consequently, I grant the Tenants a monetary award in the amount of \$19,200.00, consisting of the equivalent of 12 times the monthly rent payable under the tenancy agreement in compensation pursuant to section 51(2) of the *Act*.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in this application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find the Landlord breached section 51(2) of the *Act*.

I grant the Tenants a Monetary Order in the amount of \$19,300.00. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. 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: March 14, 2022

Residential Tenancy Branch