



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, MNDCT, FFT**

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by an agent. No representative of the named corporate respondent was in attendance.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

Service was confirmed for the parties in attendance. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

The tenants claimed that they served the corporate landlord by registered mail. The tenants did not provide any documentary evidence of registered mail nor did they provide a registered mail tracking number. Based on the paucity of evidence I am unable to determine that the corporate respondent was served with the notice of hearing and materials in accordance with the *Act*, or at all. Consequently, I dismiss the application as against the corporate respondent with leave to reapply.

During the hearing the landlords testified that they have uploaded to the Branch a piece of evidence that they did not obtain until March 3, 2022 and was not served on the tenants in accordance with the Act, Rules of Procedure or at all. Residential Tenancy Rule of Procedure 3.17 gives me the discretion to accept documentary evidence that does not meet the criteria for late evidence.

The documentary evidence of the landlord consists of a letter from the landlord JW's employer dated March 3, 2022. The tenants confirmed that they have not been served with this piece of evidence but stated that they make no objection to its inclusion and wished for the present hearing to proceed as scheduled without adjournment.

Based on the submissions of the parties I find that the evidence now submitted by the landlord is new and relevant evidence. I find that consideration of this documentary evidence does not unreasonably prejudice any one party nor would it result in a breach of the principles of natural justice. Accordingly, I allow the inclusion of the landlord's evidence pursuant to Rule 3.17. In accordance with Rule 7.8 as the tenants indicate that they are prepared to proceed without an adjournment I find no circumstances warranting an adjournment of the proceedings.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover their filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The rental unit is a stand-alone house. There was a periodic tenancy between the tenants and the previous owner of the property which started on September 1, 2017. The monthly rent was \$2,800.00 payable on the first of each month. The tenancy ended in accordance with a Landlord's Notice to End Tenancy for Landlord's Use dated May 21, 2021 with an effective date of August 31, 2021. The notice was issued by the previous owner of the property and indicated the reason for the issuance of the notice is:

All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit

The notice provides the individual landlords JW and SW as the purchasers of the property and a copy of the Buyers Notice to Seller for Vacant Possession signed by the personal landlords was also submitted into evidence.

The tenants vacated the rental unit on August 31, 2021 in accordance with the notice. The parties agree that the landlords did not occupy the rental unit at any time and have listed the property as available for rent.

The landlords submit that the original intention was for the personal landlord JW to occupy the rental property, but they were provided with an opportunity to relocate to a foreign branch of their company and could not accomplish the stated goal. The landlords testified that beginning in July 2021, with the easing of Covid restrictions in the United Kingdom, the landlord's employer took steps to arrange for a transfer for JW. JW was relocated to the United Kingdom as of November 1, 2021. JW testified and characterized this move as an "excellent opportunity" in the course of their employment.

The landlords submit that SW, the mother of JW, is listed as one of the landlords on the contract of purchase and sale but explained that this was for financing purposes and it was always intended for JW to solely occupy the rental property.

The landlords submit that being relocated for the purposes of work constitutes an extenuating circumstance which excuses them from their financial obligations pursuant to section 51(3) of the *Act*.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states that a landlord, or the purchaser of a property, must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if a tenant receives a notice to end tenancy for landlord's use of property and:

- (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 the 2 Month Notice the previous landlord indicated that the purchasers of the property have requested in writing to issue the notice as the purchaser, or a close family member, intends to occupy the rental unit.

I accept the undisputed evidence of the parties that the two personal landlords are the purchasers of the property, that they gave written request to the seller to issue the Notice to End Tenancy, and that they have not occupied the rental property as stated on the notice.

Section 51(3) provides that:

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 the case may be, 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 Policy Guideline 50 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing

one's mind or failing to adequately budget to be examples of circumstances that may not be extenuating.

I do not find the present circumstances to be an example of extenuating circumstances. The landlord was given an opportunity to relocate to another country in the course of their employment. I find little evidence that this was a requirement of their employment and not, as the landlord themselves stated in their testimony, an opportunity. I find that the landlord had the option of declining the opportunity to relocate and not pursue the option of moving to another country. If the terms of employment required the landlord to relocate it was open for them to quit their job and find alternate employment. The landlords provided no evidence that their relocation was a required term of their employment. In any event, I find that it would have been open for the landlord to resign from their job and find alternate employment.

I find that the circumstance described by the landlords to not be extenuating circumstances but the inevitable and foreseeable result of their choice to pursue an opportunity presented through their employer. I find that this is not a situation that was outside of the control of the landlords but one where they made an active choice to relocate rather than occupy the rental unit as stated on the notice to end tenancy.

I find, based on the undisputed evidence of the parties, that the purchasers did not use the rental unit for the purposes stated on the 2 Month Notice. I find that the circumstances that prevented the purchasers from using the rental unit for its stated purpose is not extenuating and therefore does not excuse the purchasers from their liability under the *Act*.

Consequently, in accordance with section 51(2) of the *Act*, I find that the tenants are entitled to a monetary award of \$33,600.00, the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I find the other costs claimed by the tenants are not damages or losses arising from a breach on the part of the landlords but simply the expected costs associated with vacating a rental unit, cleaning and moving. As such I decline to issue an award for these amounts and this portion of the application is dismissed.

As the tenants were successful in their application, they are entitled to recover the filing fee from the landlords.

Conclusion

The portion of the tenants' application as against the corporate landlord is dismissed with leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$33,700.00 as against the personal landlords JW and SW. 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: March 10, 2022

Residential Tenancy Branch