



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on April 21, 2022. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

The Landlords and the Tenants both attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other's evidence, and no issues were raised with respect to service of the documents.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 compensation for money owed or damage or loss under section 51 of the *Act*?

Background and Evidence

Both parties agree that monthly rent was \$2,000.00 per month. The Tenants stated they received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on or around April 26, 2021, and moved out on June 30, 2021, which was a day before the effective date of the Notice. The Tenants provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

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

The Landlord explained that this rental unit is located on a large acreage, and they live in a house on the adjacent lot. Beside the Tenant's rental unit is a barn, which the Landlord uses to store his farm equipment. The Tenants spoke generally about being frustrated with the noise the Landlord would make with his farm equipment. The Tenants also mentioned that they brought home a large lawn toy, which they suspect the Landlords did not want. The Tenants suspect the Landlords just didn't want them around anymore.

The Tenants stated that they were initially told that K.A.'s (one of the Landlords) parents were going to move into the rental unit, and that this was the basis for the Notice. The Tenants stated they moved out at the end of June 2021, and they started to receive text messages from people they knew in the nearby community stating that there was construction going on, that a new septic was being put nearby the barn, and the rental unit, and that there were some "hydro discrepancies." The Tenants were unclear what the messages said, other than that there was some activity in and around the rental unit in terms of construction. The Tenants stated that they heard the Landlord was wanting to add rental units to the barn, and that he wanted to turn the area into a revenue stream.

The Landlords acknowledged that they were doing some major septic repairs, and electrical work after the Tenants moved out. The Landlords stated that they put in a new septic tank, to replace a 35-year-old tank that was servicing the rental unit. The Landlord stated that their initial plan was for K.A.'s parents to move into the rental unit, and in order to simplify utilities, the Landlord had a new electrical meter installed for the barn, to separate out the power used for farm equipment. The Landlord explained that this was previously dealt with by an informal power sharing agreement with the Tenants, as the barn power was fed from the rental house. However, the Landlords did not wish to continue this, so they had it separated out. The Landlords deny that they have

intentions to rent out the garage, or that any of the work they did was inconsistent with the grounds selected on the Notice.

The Landlords acknowledged that K.A.'s parents never ended up moving in. However, the Landlords feel there were extenuating circumstances that prevented them from following through with the grounds on the Notice. More specifically, the Landlords stated that part of the reason they issued the Notice in April of 2021, was because the COVID numbers were starting to decrease, and K.A.'s parents were interested in making a move out west, to live in the rental unit, as it is the property adjacent to their daughter (Landlord). The landlords stated that this is when they issued the Notice, as K.A.'s parents had planned to come out in July of 2021.

The Landlords stated that in July 2021, there were signs that the Delta variant of COVID was problematic, and that it was more virulent, infectious, and deadly than anticipated. The Landlords stated that K.A.'s parents are 79 and 77, and they did not want to travel until the Delta variant of COVID had passed, and it was safer to travel. The Landlords stated that both of them, and K.A.'s parents were vaccinated, but K.A.'s father also had "severe" vertigo after getting his shot, which restricted his ability to move. The Landlords explained that this continued into the fall, and it was at that time that another variant came out, which was even more contagious. The Landlords explained that they were supposed to fly back to Ontario to further discuss the move. However, both of the Landlords stated there was confirmed COVID cases at their work, and they had to isolate, and refrain from travel, so the Landlords' trip back to Ontario did not happen.

The Landlords explained that after Christmas 2021, K.A.'s parents decided they were not going to travel and make the move, as originally planned, due to the progression and prevalence of the COVID virus. The Landlords then decided to re-rent the rental unit, and subsequently they found new Tenants in mid-January 2022. The Landlords provided a copy of a letter from K.A.'s parents explaining the above noted extenuating circumstances from their perspective, and corroborating the Landlord's version of events.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- *accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- *used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- *accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

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.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlords to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. The Landlords selected the following ground:

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

I turn to the following portion of the Act:

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.

(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 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.

I note the Landlords acknowledged that they did not follow through with the stated purpose or grounds listed on the Notice. As such, I am satisfied the Landlords breached section 51(2) of the Act.

This typically entitles the Tenants to compensation. However, the issue now becomes whether or not the Landlords have sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

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*

I have considered the Landlords' explanation regarding why they re-rented the rental unit, in January of 2022, around 6 months after the effective date of the Notice. I note the Tenants vaguely suggested that the Landlords may have wanted them out in order to put in additional rental units in the barn, and make more money. However, I note there is insufficient evidence to support this assertion. The Landlords have acknowledged that there were some septic and electrical upgrades, but I find the explanation as to why these upgrades were completed are reasonable, given the age of the previous septic system, and the fact that the rental unit shared power with a barn used for farming equipment.

I note the Landlords stated they initially issued the Notice because K.A.'s mother and father were planning on moving out to stay at the property. I note they have stated that, after the Notice was issued in April, both the lingering Delta variant, K.A.'s fathers reaction to the vaccine caused plans to be delayed, due to his subsequent mobility challenges, and the fact that they are in their late 70's. Then, the K.A.'s parents became concerned with the emerging Omicron variant in the fall of 2021, which exacerbated the delay in coming out west.

I have reviewed the testimony and evidence on this matter, and I note that during the material time there was an ongoing and significant pandemic. I accept that the Delta variant, and its emergence in Canada would have had a material impact on intentions and plans. Also, I accept that the vaccine may have caused some health impacts for

one of K.A.'s parents. Further, I also note there was another variant of concern in the Fall of 2021, which could have further impacted plans and intentions. The Landlords provided a letter from K.A.'s parents corroborating the Landlord's version of events, including the health issues of one of K.A.'s parents, and the impacts the COVID had on their plans. I find that the emerging variants of COVID-19, following the issuance of the Notice, are considered extenuating circumstances, as they would have had a material impact on whether K.A.'s parents were able to safely and reasonably travel, and they would have been outside of anyone's control. I find that it is reasonable to change plans when confronted with a public health threat of this magnitude.

When viewing the totality of the situation, I find this situation is extenuating such that it would have substantially contributed to the Landlord's inability to accomplish the stated purpose. Pursuant to section 51(3), I excuse the Landlord from having to pay 12 months compensation for breaching section 51(2).

I dismiss the Tenants' application, in full, without leave.

Conclusion

I dismiss the Tenants' application in full, without leave.

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: April 22, 2022

Residential Tenancy Branch