



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, 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 advocate.

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.

As both parties were present service was confirmed. 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*.

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.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given a full opportunity to make submissions and present evidence related to the claim. The parties were cautioned against making submissions irrelevant to the matter at hand.

The parties agree on the following facts. This periodic tenancy began on April 15, 2020. The monthly rent was \$3,900.00 payable on the first of each month. The tenancy ended pursuant to a 2 Month Notice to End Tenancy for Landlord's Use dated March 25, 2021 on the effective date of the notice on May 31, 2021. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord or the landlord's close family member. The landlord never occupied the rental unit and instead listed the property for sale in September, 2021.

The landlord submits that they issued the 2 Month Notice intending in good faith to occupy the rental unit but changed their mind and decided they no longer wish to live in the rental unit. The landlord writes in their affidavit:

On or about September 2021 due to some concerns that my wife and I had about matters like the amenities around the location of our new home, the distance from schools and lack of social life my wife changed her mind and she decided she no longer wanted to live in [the rental unit municipality].

The landlord's spouse provides an affidavit confirming the landlord's submission stating:

Sometimes towards the end of August due to some concerns I had about the distance of our home to the schools, lack of our son's social life with other kids, I changed my mind and decided I no longer wanted to live in [the rental unit municipality].

The landlord's advocate spent much of the hearing time making submissions on the landlord's initial good faith intention when issuing the 2 Month Notice, speaking about

the timing of the rental unit being listed for sale and disputing that the tenants suffered any inconvenience or difficulties.

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,

The Landlord's Notice to End Tenancy for Landlord's Use of March 25, 2021 provides that the rental unit will be occupied by the landlord or a close family member. The parties agree that the tenancy ended on May 31, 2021 in accordance with the Notice. The undisputed evidence of the parties is that the landlord and their family members never occupied the rental unit and did not use the property for the stated purposes.

The landlord used much of the hearing time making submissions about their good faith intention when originally issuing the 2 Month Notice, as well as the timing of when the property was listed for sale. I find the submissions to be irrelevant to the matter at hand. Section 51(2) simply requires a landlord to accomplish the stated purpose for ending the tenancy within a reasonable timeframe. Their original intentions or any ulterior motive is irrelevant to the issue of whether the landlord carried out the purpose provided on the notice. The landlord's undisputed testimony, supported in their

documentary submission is that they have not occupied the rental unit as they stated on the 2 Month Notice.

Section 51(3) of the *Act* 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 as an example of circumstances that would not be considered extenuating.

The landlord submits that they, and their family members, changed their mind about occupying the rental unit and ultimately chose to list the property for sale instead. As changing one's mind is specifically indicated in the Guidelines as a circumstance that would not be considered extenuating, I find insufficient evidence that there is any extenuating circumstance that has contributed to the landlord not accomplishing the stated purpose for ending the tenancy.

I find, based on the evidence of the landlord, that the landlord did not use the rental unit for the purpose stated on the Notice to End Tenancy for at least 6 months. I find that no extenuating circumstances exist that would excuse the landlord from paying an amount equivalent to 12 months' rent in accordance with section 51(2) of the *Act*.

Consequently, I find that the tenants are entitled to a monetary award of \$46,800.00, the equivalent of 12 times the monthly rent for this tenancy.

As the tenants were successful in their application, they are also entitled to recover the \$100.00 filing fee.

I note that pursuant to section 58(2)(a), while the full amount of the monetary award issued in the tenants' favour exceeds the monetary amount for claims under the *Small*

Claims Act, as the amount arises pursuant to section 51(2) of the *Act*, the matter remains within the jurisdiction of the *Act* and Branch.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$46,900.00. 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: April 29, 2022

Residential Tenancy Branch