



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties each confirmed the exchange and receipt of the other’s evidence and that no recording devices are being used for the hearing.

Preliminary Matter

The Parties agree that the Landlord’s name on the application be corrected to reflect the Landlord’s provision of the spelling of the Landlord’s first name. Given this agreement I amend the application to set out the corrected name.

Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started on September 1, 2018 and ended August 31, 2021. Rent of \$3,100.00 was payable on the first day of

each month. The security and pet deposits have been dealt with. The Tenants were given a two month notice to end tenancy for landlord's use dated June 28, 2021 (the "Notice"). The stated reason for the Notice is that the Landlord or the Landlord's spouse will occupy the unit. The effective date of the Notice is August 31, 2021. The Landlord never occupied the unit and on September 13, 2021 the unit was listed for sale with the completion of the sale on October 14, 2021.

The Landlord states that they were prevented from occupying the unit due to financial difficulties caused by the Landlord's spouse experiencing a failing business in another county. The Landlord states that the business was failing because of COVID. The Landlord states that to alleviate their financial difficulties they intended to sell their home in another location (the "R Home") and move into the unit. The Landlord states that in June 2021 they listed their R Home and entered into a sale contract on August 1, 2021 for that home. The Landlord states that on August 12, 2021 this sale fell through creating a liquidity problem and that on the advice of their real estate agent they decided to sell the unit instead. The Landlord states the unit was listed for sale on September 13, 2021 as they were informed that there was a better market in the unit's location. The Landlord states that the unit was sold on September 23, 2021 with the final closing on October 14, 2021. The Landlord states that the R Home was removed from sale on October 22, 2021.

The Landlord states that they never sought out any financial assistance from a bank as they are immigrants with limited knowledge of how the system works and no experience with re-financing. Legal Counsel for the Landlord submits that the Landlord had high monthly mortgage payments and needed to support their family as well. Legal Counsel submits that the purchase of the R Home was a first-time occurrence, and that the Landlord had no experience with finances. Legal Counsel submits that the Landlord could not meet their mortgage obligations with business or other income as the out of country business of the Landlord's spouse was nearly bankrupt.

The Tenant states that at the time they were served with the Notice they believed that the Landlord never had the intent to occupy the unit as their R Home was of much better quality. The Tenant states that on June 3, 2021 the Landlord had increased the sale price of the R Home by \$390,000.00 and that this increase throws doubt on their stated financial difficulties. The Tenant states that the sale of the R Home also gave the purchaser only 6 days to close, despite a possession date of November 2021 and that this was too short a time to complete the removal of the conditions. The Tenant states that at the beginning of August 2021 the Tenants asked the Landlord for an extension of the effective date as there was a low rental vacancy rate in the community where their children were attending school. The Tenant states that the Landlord refused and told the Tenants at this time that the Landlord was moving into the unit.

The Landlord states that even though they were facing financial difficulties they believed that the R Home was listed at too low a price and that the Landlord wanted more money for that sale. The Landlord states that they did not seek legal advice and were not aware of the Act and the penalties. The Landlord states that they felt that they could rely on their real estate agent in relation to the sale of the unit.

Legal Counsel argues that the Landlord should be excused from a penalty as they were facing severe financial difficulty and hardship and that as newcomer, they were unaware of refinancing or credit possibilities. The Tenant states that they too are immigrants, and that this status did not prevent the Tenants from knowing the law and pursuing financial solutions to financial problems.

The Landlord provides listing and sale documents for the properties, and it is noted that the R Home was listed for \$2,390,000.00 and the unit was listed for \$1,499,000.00. The Landlord states that the R Home holds a mortgage of around \$1,000,000.00.

Analysis

Section 51(2) of the Act provides that 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(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 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.

There is no dispute that the Landlord did not occupy the unit for any time. The essence of the Landlord's evidence of extenuating circumstances is that they were prevented from occupying the unit as it had to be sold to address a significant or severe financial problem. Their evidence also is that they were in financial problems at the time the R Home was listed, and that the sale of this home was their original solution to the problems. The undisputed evidence of having increased the sale price for the R Home however does not support the reasons given for listing the R Home and issuing the Notice. There is no evidence that the Landlord could not have chosen to sell the unit as a solution at the time and serve the Tenant's with a different notice to end tenancy if the

purchaser intended to occupy the unit as allowed under the Act. There is no evidence that the failure of the sale of the R Home in August 2021 caused their financial problems to worsen in immediacy. There is no evidence that the R Home could not be sold or that the Landlord could not obtain financing to carry them over to the date of the sale of the R Home. The evidence is that both units were up for sale at the same time and that the rental unit sold first. I consider that the Landlord has only given evidence of acting in their best financial interests in selling the rental unit as opposed to waiting to sell their other, considerably more valuable property. Choosing to act in your best financial interests does not constitute evidence of extenuating circumstances.

For these reasons I find that the Landlord has not substantiated that extenuating circumstances prevented the Landlord from occupying the unit. The Tenant is therefore entitled to the compensation claimed of **\$37,200.00** (\$3,100.00 x 12). As the Tenants' claim has been successful, I find that the Tenants are also entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$37,300.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$37,300.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 26, 2022

Residential Tenancy Branch