



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

On January 29, 2022, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing. The Landlord attended the hearing as well, with M.D. attending as a co-owner of the rental unit. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

All parties confirmed service of documents. As such, all parties’ evidence was accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 15, 2014 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on August 31, 2021 by way of an Order of Possession (the relevant file number is noted on the first page of this Decision). Rent was established at \$1,312.46 per month and was due on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$600.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenants were served with the Notice on or around March 21, 2021. The reason the Landlord checked off on the Notice was because "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)." As well, the Landlord checked off the box indicating that "The father or mother of the landlord or landlord's spouse" would be occupying the rental unit. The effective end date of the tenancy on the Notice was noted as May 31, 2021.

M.D. advised that prior to service of the Notice, her parents had been living separately, but it became too expensive, so they moved back in together. However, their relationship devolved, and a notarized letter was provided at the previous hearing confirming her mother's intention to move into the rental unit on the effective date of the Notice. As the Tenants disputed the Notice, a hearing to determine the status of the tenancy was not scheduled until July 2021. She stated that in the months since May 2021, the climate around COVID evolved again and her mother became hesitant to make changes out of fear. As well, M.D.'s father's health degenerated to the point that

he required care, which fell on M.D.'s mother. While the parents' relationship is unstable, and it was her mother's intention to move into the rental unit, these were extenuating circumstances that prevented her from doing so. She stated that the rental unit has remained empty, and it sits vacant for when her mother can adequately and safely move in.

The Landlord advised that there is a fear of his mother-in-law and father-in-law of being separated should there be complications with COVID. As well, the need for his mother-in-law to be his father-in-law's caregiver was unforeseen as it was originally her intention to move out. He stated that the 40-year marriage between these two people, and then the impending separation, has been difficult to navigate. As well, given their advanced age, the father-in-law was not able to provide a letter to corroborate the Landlord's position with respect to this situation.

Tenant I.I. advised that they disputed the Notice as it was their belief that the Landlord did not serve it in good faith. He stated that his wife lost her job and by having to move, they are paying more than double the rent. He referenced letters submitted as documentary evidence that confirm that the mother-in-law did not move into the rental unit. As well, he stated that she should have moved in within a reasonable period of time after the effective date of the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing this Notice, I am satisfied that it is a valid Notice.

With respect to the Tenants' claim for twelve-months' compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on March 21, 2021 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

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.

Regarding this situation, I also find it important to note that Policy Guideline # 50 outlines the following about extenuating circumstances: "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.”

When reviewing the totality of the evidence and testimony before me, I note that the Landlord advised that it was his good faith intention to have his mother-in-law move into the rental unit. However, the good faith requirement ended once the Notice was accepted, and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective end date of the Notice.

As the consistent and undisputed evidence is that the Landlord’s mother-in-law did not do so, I must then consider his submissions with respect to extenuating circumstances. As noted above, I am satisfied that the effective end date of the tenancy was May 31, 2021 and that this was the date that the Landlord’s mother-in-law planned and expected to move into to occupy the rental unit. However, given that the Tenants disputed the Notice, this date was pushed back to August 31, 2021.

While a portion of the Landlord’s submissions regarding extenuating circumstances were due to uncertainty from COVID, I find it important to note that we have all been living through this uncertainty and have had to adjust accordingly. However, given the unpredictable and unprecedented nature of this situation during our lifetimes, I also recognize the challenges that the pandemic has created, and I do find it reasonable to accept that this could sometimes lead to uncertainty and likely unforeseen circumstances.

In addition, I note that the Tenants submitted a copy of the mother-in-law’s notarized letter which confirms her difficult relationship with her spouse and her desire to move into the rental unit. When reading this document, I accept that their relationship was tenuous and that she had no desire to live with him anymore. However, given the Landlord’s submissions about the father-in-law’s ailing health, I accept that she feels obligated to care for him despite wishing to live elsewhere. I recognize the need to attend to family matters as well, especially in these turbulent times. Clearly the father-in-law’s deterioration in health was somewhat unforeseen, otherwise the mother-in-law would have left already.

When considering all of these factors in their totality, I find that, on a balance of probabilities, the Landlord provided sufficient evidence of extenuating circumstances that prevented his mother-in-law from moving into the rental unit after the Order of Possession date. I find it more likely than not that had the Tenants not disputed the Notice and prolonged when the Landlord received vacant possession of the rental unit back, then his mother-in-law would have moved in after the effective date of the Notice. As such, I am satisfied that the Tenants are not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*.

As the Tenants were not successful in this claim, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenants' Application for Dispute Resolution without leave to reapply.

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 14, 2022

Residential Tenancy Branch