



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement being 12 months' rent as compensation pursuant to section 51(2) and section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlords attended ("the landlord"). The tenants attended ("the tenant").

The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

Each party confirmed they were not recording the hearing.

Each party confirmed the email address to which the Decision shall be sent.

Preliminary Issue – Settlement

I explained to the parties that under section 63 of the Act, the Arbitrator may assist the parties to settle their dispute. If the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained to the parties that I do not provide legal or any advice. They could call the RTB Information Officers or consult the website for help and information. They could settle the issues outside or during the hearing.

The parties spent considerable time discussing settlement. They did not reach settlement.

Accordingly, the hearing continued.

Preliminary Issue – Order of Possession

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the Act, I was required under section 55 of the Act to grant an Order of Possession in favour of the landlord.

Section 55 states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Two Month Notice?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The hearing, scheduled for 1-hour, lasted 105 minutes. Each party submitted considerable documentary evidence. Each provided substantial conflicting testimony. While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. Only admissible, relevant evidence is referenced that is material to the issues, my findings and my Decision.

Background of Tenancy

The parties agreed as follows. The tenancy began on April 20, 2020, for monthly rent of \$1,750.00 payable on the first of the month.

The landlord lived on the main floor of the building with their child. The unit is the downstairs apartment with two bedrooms and 2 bathrooms where the tenant lived with their children.

The landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice", or "Notice") dated May 24, 2021. The tenant acknowledged service. A copy of the Notice was submitted which is in the standard RTB form. It stated the following as grounds for ending the tenancy:

The rental unit will be occupied by the landlord or the landlord's spouse

The tenant did not dispute the Notice and vacated the unit on the effective date of July 31, 2021. The tenant received the statutory required compensation equivalent of one month's rent.

Tenant's Submissions

The tenant acknowledged that one of the bathrooms and one of the bedrooms in the unit were not usable before they moved out because of water damage.

The tenant claimed that the landlord AS's sister and her child, who moved in with the landlord in June 2021, occupied the unit after they moved out. The tenant submitted considerable evidence such as floor plans of the house which they claimed showed it was more likely than not that the guests moved in downstairs. They submitted photographs showing the landlord AS continued to use one of the bedrooms upstairs as an office, thereby leading to the conclusion that the sister and child moved in downstairs.

Therefore, the tenant claimed, the landlord has not complied with the conditions of the Act under which a Two-Month Notice may be given, the landlord must pay 12 months rent to the tenant under section 51(2).

Landlord's Submissions

The landlord testified as follows. Both landlords work at home and required the space in the unit for offices. As they were aware of the water damage, the plumber RS, called as a witness, consulted on the extent of the damage and required repairs.

Repairs to the unit began started shortly after the tenants moved out and were completed in February 2022, seven months later. The landlord KS used the unit as an office from time to time whenever possible given the state of repairs. As soon as the condition of the unit permitted it, he established a permanent office in the unit in November 2021.

The landlord testified as follows. They acknowledged that the sister and child of the landlord AS stayed with them from June 2021 until December 2021 as guests. However, the guests did not use the downstairs suite and they continued to stay upstairs with the landlord after the tenant moved out. The landlord acknowledged that

the children sometimes played in the usable bedroom in the unit. They received no rental income related to the unit. The unit was not rented after the tenant moved out.

In support of their version of events, the landlord called as a witness the plumber RS who did the repairs in the unit. RS testified for over 20 minutes as follows. The damaged bathroom and bedroom contained mold and water damage requiring removal of all fixtures and considerable remediation. During the repairs, RS discovered water damage to the second bathroom which needed similar extensive repairs.

RS explained the work took much longer at seven months than expected for several reasons. RS's partner was off work with an injury for two months, the pandemic slowed supplies and workers were unavailable. RS testified the unit was not liveable during most of the time the work was taking place because of dust, mold and noise. The estimated cost of the repairs is \$18,000.00.

Therefore, the landlord claimed that they took reasonable steps to occupy the unit and occupation was delayed because of extenuating circumstances. They have complied with requirements in the Act and the tenant's application should be dismissed.

The landlord submitted many arguments in testimony as well as written submissions in support of the landlord's assertion that the landlord now occupied the unit.

Tenant's Submissions in Reply

The tenant responded and testified as follows. Before the Two Month Notice was issued, they were informed by the landlord that they intended AS's sister to live in the unit. The tenant informed the landlord this was not a permissible reason under the Act for issuing the Notice.

The Notice was then issued for the reason the landlord would occupy the unit. In other words, the content of the Notice was drafted to comply with the Act and not the actual intention of the parties. The Notice was adapted to the convenience of the landlord irrespective of the inconvenience for the tenant. The tenant stated they believed they were deceived by the landlord, who they once considered close friends.

Analysis

The Act

The Notice was issued pursuant to section 49(3) of the Act which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(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 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.

(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 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.

Burden of Proof

Pursuant to section 51(2) of the *Act*, the landlord has the onus to prove they followed through with the stated purpose of the Notice. The landlord also has the onus to prove extenuating circumstances. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus to prove their position. Based on all the above, the evidence and testimony from the landlord and tenant, and on a balance of probabilities, my findings are set out below.

Extenuating Circumstances

The effective date of the Notice was July 31, 2021. *RTB Policy Guideline 50 – Compensation for Ending a Tenancy* addresses what a reasonable period is. As acknowledged by the landlord, they landlord did not move into the rental unit “within a reasonable period after the effective date of the notice”.

It is open to the landlord to submit that extenuating circumstances prevented the landlord from moving into the rental unit within a reasonable period after the effective date of the Notice.

Policy Guideline 50 states as follows about extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements.

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed by a wildfire.
- A tenant exercised their right of first refusal but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

Extenuating circumstances are meant to cover unanticipated issues or issues which were out of the Landlord's control.

I have carefully considered the Act and the Policy Guideline as well as the parties' evidence. I find the landlord has met the burden of proof on a balance of probabilities

that there were extenuating circumstances that prevented them from moving in and accomplishing the stated reason in the Notice.

The landlord's testimony about the reasons for not moving in were credible, convincing and clear and supported by the witness RS. I find the landlord has submitted sufficient evidence that the water damage changed their ability to occupy the unit and that they did so as soon as possible.

I accept the credible and reliable testimony of the plumber RS that the work was extensive, involved both bathrooms and a bedroom, and the full scope was only gradually revealed after the tenant moved out. I find the landlord located his office in the unit as soon as possible, that is, in November 2021.

I find these are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, because of matters, that is, the extensive water damage, that could not be anticipated and were outside a reasonable owner's control.

As I have found the landlord has met the burden of proving extenuating circumstances, I dismiss the tenant's application for compensation and for recovery of their filing fee without leave to reapply.

Conclusion

The tenant's application is dismissed 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: May 20, 2022

Residential Tenancy Branch