



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenants KW, AR and AK (the tenant) and landlord GG (the landlord) attended the hearing. The landlord was assisted by advocate SG. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Are the tenants entitled to:

1. a monetary order in an amount equivalent to twelve times the monthly rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule of procedure 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent."

Both parties agreed the tenancy started on April 01, 2019 and ended on May 31, 2021. Monthly rent was \$2,200.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,100.00 was collected and the landlord returned it. The tenancy agreement was submitted into evidence.

Both parties agreed a Two Month Notice to End Tenancy for Landlord's Use (the Notice) was served on April 03, 2021. It states that the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to serve the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The effective date was May 31, 2021. The landlord affirmed the sale was finalized in May 2021 and he purchased the rental unit so his parents could occupy it for one year.

The tenants are claiming compensation in the amount of \$26,400.00 (12 months of monthly rent payment of \$2,200.00)

The landlord claims that extenuating circumstances prevented his parents from occupying the rental unit.

The landlord stated that his parents would occupy the rental unit for one year and, if they liked the neighbourhood, they would be allowed to continue to occupy the unit. If the landlord's parents did not like to live in the rental unit, the landlord would demolish it after one year.

The landlord testified his elderly parents planned to move to Canada in June 2021. The landlord's parents scheduled flights to Canada on June 08 and 24, August 04 and 27 and September 24, 2021 and could not come because the flights were cancelled due to the pandemic. The landlord said his parents could travel to Canada changing flights in another country but they did not feel comfortable with that, as they do not speak

English, they were concerned about connecting flights in another country and possibly having to quarantine during the connection. The landlord submitted into evidence the airfares. The September 24, 2021 flight was reserved on August 14, 2021. The tenant affirmed that the airfares do not indicate the reason why the flights were cancelled.

The tenant stated the landlord owns a real estate development company and the landlord agreed. The landlord applied for the demolition permit when he purchased the rental unit because it is valid for more than one year once it is issued and sometimes it takes 5 to 6 months for the permit to be issued. The landlord does not know how much he paid for the demolition permit. The tenant submitted a copy of the permit, issued on August 27, 2021. The contractor's name is the landlord's real estate development company.

The landlord testified that because his parents could not come to Canada he demolished the rental unit in late August 2021.

The landlord said that he purchased the rental unit under his name, not his company, as he purchased the rental unit for his parents to occupy it.

The tenant inquired why the landlord purchased the rental unit without inspecting and confirming that the rental unit was appropriate for his elderly parents. The landlord affirmed that he did not want to disturb the tenants and the real estate agent informed the landlord that the rental unit needed upgrades.

The tenant stated the landlord verbally asked the tenants to move out before the effective date of the Notice. The landlord testified that he asked the tenants to move out earlier because his parents were supposed to arrive on June 04, 2021 and the landlord would like to paint the rental unit.

The tenant believes the landlord purchased the rental unit as an investment and served the Notice under false pretenses.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Per section 51(2) of the Act, the onus to prove the case is on the landlord.

Sections 49(2) and (3) of the Act state:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[...]

(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(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

Section 51(3) states the landlord may be excused from paying the tenant the amount required by section 51(2) if extenuating circumstances prevented the landlord 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 Branch Policy Guideline 50 states:

E. 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

(emphasis added)

The commonality of the examples outlined in the guideline for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority or control over the event.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I am aware that in 2021 some countries could not have flights to Canada because of the pandemic. However, the airfares submitted into evidence do not state the reason why the landlord's parents' flights were cancelled. The tenant specifically raised the reason why the landlord's parents' flights were cancelled, and the landlord did not present evidence to establish that the flights were cancelled because of the pandemic. I find the landlord failed to prove, on a balance of probabilities, that the landlord's parents' flights were cancelled because of the pandemic.

The landlord admitted that he owns a real estate development company only after the tenant affirmed this relevant fact.

The tenant inquired why the landlord purchased the rental unit for his elderly parents without inspecting it prior to purchasing. I find the landlord's response testimony was vague and not convincing.

The landlord applied for the demolition permit in May 2021 and only learned that his parents would not be able to travel to Canada in August 2021. The landlord's testimony about the validity of the permit was vague ("for more than one year").

In light of the above remarks, I find the landlord's testimony was not convincing.

Furthermore, the permit was issued on August 27, 2021, the landlord demolished the rental unit in late August 2021, and his parents reserved a flight on August 14, 2021 to travel to Canada on September 27, 2021. It is not likely that the landlord would be able to start demolishing the rental unit in the days immediately after the landlord received the permit if he was not planning to do that.

Thus, I find the landlord failed to prove, on a balance of probabilities, that extenuating circumstances prevented his parents from occupying the rental unit from June 01 to November 30, 2021, the six-month period after the Notice's effective date.

As such, per section 51(2) of the Act, the tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenants a monetary award in the amount of \$26,400.00 (12 x \$2,200.00).

As the tenants were successful, I authorize the tenants to recover the filing fee in the amount of \$100.00.

In summary, the tenants are entitled to a monetary award in the amount of \$26,500.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenants a monetary award in the amount of \$26,500.00.

The tenants are provided with this order in the above terms and the landlord must be served with this order. 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: May 11, 2022