



Dispute Resolution Services

Page: 1

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 tenant 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 MV (the tenant) and WM and respondents HQ (the respondent) and MF attended the hearing. Witness SN for the tenant also attended. 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 section 89 of the Act.

Issues to be Decided

Is the tenant entitled to:

- a monetary order in an amount equivalent to twelve times the monthly rent?
- 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."

The tenant affirmed the tenancy started on June 16, 2020 and ended on May 31, 2021. Monthly rent was \$1,700.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$850.00 was collected and the landlord returned it. The tenancy agreement was submitted into evidence. The respondent stated he is not aware of the tenancy details.

The respondents made an offer to purchase the rental unit on April 12, 2021 and the completion was on July 05, 2021.

Both parties agreed a Two Month Notice to End Tenancy for Landlord's Use (the Notice) was served on April 23, 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 June 30, 2021.

The respondent testified he purchased the rental unit so he could occupy it with his family, and he asked the seller to serve the Notice.

The tenants are claiming compensation in the amount of \$20,400.00 (12 months of monthly rent payment of \$1,700.00)

The respondents claim that extenuating circumstances prevented them from occupying the rental unit.

The respondent said he works in another province and his employer established a mandatory telework policy on March 18, 2020. The respondent's employer announcement states:

Updated on COVID 19: Mandatory telework and restricted access in effect as of Thursday
As of Thursday, March 19 [2020], mandatory telework is in place.

No one will be granted access to Bank facilities...

(emphasis added)

On December 04, 2020 the respondent's employer announced:

Context:

Beginning on March 17, 2020, all non-critical onsite staff of the Bank were required to work from home on an ongoing basis due to health and safety concerns stemming from the Coronavirus pandemic (the "Mandatory Telework" posture). This new temporary reality has led the Bank to enhance the flexibility around schedule and working arrangements, including the potential to work from a remote location within Canada (different city or province). **This temporary domestic remote Work Policy** ensures that the Bank remains in compliance with its obligations under health and safety, tax and workplace insurance.

Scope:

This policy applies to all regular and term employees working remotely in Canada during Mandatory telework. This policy does not apply to employees who are required to work onsite for critical operations as they are not eligible for remote work arrangements.

(emphasis added)

On April 29, 2021 the respondent's employer announced:

Hybrid for balance

Our model will allow most employees to telework up to 50 percent of the time, balanced over a two-week period, so that we all get the benefit of seeing our colleagues onsite with some regularity. That could mean working at home two days one week and three days the next, or one week working at home followed by a week in the office. If you choose to be onsite everyday, you can.

The respondent affirmed he was not expecting the change in the telework policy and that he could not move to the rental unit because of the April 29, 2021 telework policy.

The tenant stated the telework policy announced on December 04, 2020 was temporary and this should not be considered an extenuating circumstance.

The respondent testified that telework has become a common policy and his colleagues in similar positions in other companies were also allowed to work remotely from anywhere in Canada. The respondent was aware that the telework policy was temporary but decided to move to British Columbia.

The respondent said his parents are permanent residents of Canada and will also be living in the rental unit.

The respondent listed the rental unit for rent on July 15, 2021 and re-rented it for \$2,600.00 on August 01, 2021.

The tenant affirmed she informed the respondents that she would like to continue to occupy the unit and the respondents decided to re-rent the unit asking for a higher rent. The respondent stated the tenant did not say that she would like to continue to occupy the rental unit.

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 respondents.

Sections 49(2) and (5) 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
- (5) A landlord may end a tenancy in respect of a rental unit if
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 51(2) of the Act provides that the purchaser, 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 purchaser 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 respondent's employer announcements dated March 18 and December 04, 2020 clearly indicate that the telework policy is temporary because of the pandemic. The respondent admitted that he was aware the telework policy was temporary when he made an offer to purchase the rental unit on April 12, 2021.

I find it is not unreasonable or unjust for the respondents to pay the compensation claimed by the tenant, as the respondents purchased the rental unit knowing that they did not have the right to work remotely permanently.

Furthermore, the respondents learned on April 29, 2021, one week after the Notice was served, that they would not be able to move to the rental unit and did not offer to rescind the Notice. The respondents could have offered to rescind the Notice regardless of the tenant informing that she would like to continue the tenancy or not. The respondents re-rented the unit receiving a rent 53% higher.

Thus, I find the respondents failed to prove, on a balance of probabilities, that extenuating circumstances prevented them from occupying the rental unit from July 01 to December 31, 2021, the six-month period after the Notice's effective date.

I accept the tenant's uncontested testimony that monthly rent was \$1,700.00.

As such, per section 51(2) of the Act, the tenant is entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenant a monetary award in the amount of \$20,400.00 (12 x \$1,700.00).

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

In summary, the tenant is entitled to a monetary award in the amount of \$20,500.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenant a monetary award in the amount of \$20,500.00.

The tenant is provided with this order in the above terms and the respondents must be served with this order. Should the respondents 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: June 28, 2022

Residential Tenancy Branch