



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on July 5, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

Both parties attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other's documentary evidence and the Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding. I find all documents were sufficiently served.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the *Act*?

Background and Evidence

Both parties agree that monthly rent was \$1,500.00 per month. The Tenant stated he received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) in June 2021, and moved out on or around August 31, 2021. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- 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).
 - The Father or Mother of the Landlord or Landlord's spouse

The Landlord stated that she bought the house in 2021, and inherited this tenancy. The Landlord explained that the house consists of a suite on the main/lower floor (which is the subject rental unit), as well as an upper floor suite. The Landlord stated that her mother and father-in-law wanted to move into the rental unit, which is why she issued the Notice. She stated they moved in in the first week of September along with the Landlord's sister-in-law and her baby. The Landlord stated that they all moved out in early November 2021, after only two month because the carpets were smelly and the heat did not keep the house warm enough.

The Landlord stated that once her family moved out in November 2021, she replaced the flooring, and upgraded the heaters, and re-posted the ad online. The Landlord stated that she re-rented the unit as of December 1, 2021.

The Tenant stated that she is seeking compensation because the Landlord/close family didn't move in for at least 6 months. The Tenant also pointed out that there are no extenuating circumstances which should excuse the Landlord from paying compensation.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

*ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S
USE OR FOR RENVOATIONS AND REPAIRS*

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlord to demonstrate that she accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that she has an extenuating circumstance. The Landlord selected the following ground:

- 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).
 - The mother or father of the Landlord or Landlord's spouse

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

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.*

In this case, I note the onus is on the Landlord to prove that she accomplished the stated purpose on the Notice. The Landlord explicitly stated that her family only moved in for around 2 months, and then moved out in early November 2021. The Landlord then re-rented the unit as of December 1, 2021, which was only 3 months after the end of the tenancy.

Given the above, I find the Landlord breached section 51(2) of the Act since her mother/father-in-law failed to move in for at least 6 months, which typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that she should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

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*

The Landlord did not speak to any extenuating circumstances. The Landlord only spoke about her mother and father-in-law noticing a smell in the carpet, and that the rental unit wasn't warm enough. I am not satisfied that this qualifies as an "extenuating circumstances", such that it would be unreasonable or unjust for the Landlord to pay the compensation.

I award the Tenant \$18,600.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$1,550.00. I also award the \$100.00 filing fee.

Conclusion

I grant the Tenant a monetary order in the amount of \$18,700.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: July 05, 2022

Residential Tenancy Branch