



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNECT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for May 12, 2022.

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both tenants attended the hearing. The landlord attended the hearing with their legal counsel LZ. Although the reconvened hearing was set for one hour beginning at 1:30 p.m., the hearing was extended an additional 74 minutes to ensure that both parties were provided with a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

Preliminary Issue - Service of Documents

The landlord acknowledged receipt of all hearing documents, and was ready to proceed with this matter.

The tenants testified that only RB was served with the landlord's evidentiary materials. RB testified that he was served with only one package from the landlord. Counsel for the landlord testified that they were unaware that SP resided at a different address, which the landlord did not have. After discussing the matter with both parties, RB confirmed that they were the primary applicant for this application, and was prepared to represent both parties and respond on behalf of both parties in the hearing. SP confirmed that they took no issue with proceeding with the scheduled hearing and admittance of the landlord's evidentiary materials as RB was in receipt of the landlord's evidentiary materials, and would be representing and responding on behalf of both tenants in the hearing.

RTB Rule 6.7 of the RTB Rules of Procedure states the following:

6.7 Party may be represented or assisted

A party to a dispute resolution hearing may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make their presentation.

As I was satisfied that RB was in a position to represent both tenants in the hearing, and as I am satisfied that it would not be prejudicial to SP to admit the landlord's evidence and proceed with the tenants' application as scheduled, the hearing proceeded as scheduled.

I do note that at 3:39 p.m., 129 minutes into the hearing, RB expressed concern again about the fact that SP was not served with the landlord's evidentiary materials, and that the landlord had disregarded the requirements for service under the *Act* and legislation. After discussing the issue with RB again, RB confirmed that they were not objecting to the consideration of the landlord's evidentiary materials or continuing with the hearing as scheduled.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on March 1, 2018. The tenancy ended on April 30, 2020 after the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use on February 21, 2020. Monthly rent was set at \$1,750.00, payable on the first of the month. The tenants' security deposit of \$875.00 was returned at the end of the tenancy.

The tenants filed this application requesting compensation under the *Act* for the landlord's failure to occupy the home in the manner and for the duration required under the *Act*. The tenants discovered an online advertisement of the coach home for rent on September 8, 2020, advertising the home for rent unfurnished for \$2,150.00 per month, or furnished for \$2,500.00 per month.

The landlord served the tenants with the 2 Month Notice as the landlord's father, NE, had separated from their partner and sold their home. The landlord owned the property which consists of a coach home, which was rented to the tenants, and the main home which was rented out as a short-term vacation rental property. The main home also contained a basement suite, which the landlord testified was too small to be rented out, and was used by the landlord as an office.

The landlord testified that they were unaware of the specific details of the separation, but wanted to help their father by allowing their father to reside in the coach home rent-free. The agreement was for the landlord's father to assist with managing the short-term vacation rental. The landlord does not dispute that they had advertised the home, and re-rented the home as of November 1, 2020 as their father had reconciled with their ex-partner, and had moved out as of October 31, 2020. The landlord confirmed that the advertisement noted that the coach home was available on October 1, 2020, which was done so in error as the home was occupied until October 31, 2020. CE noted that most tenants would require at least 30 days notice to end their tenancy with their previous landlords, and October 1, 2020 would not have made sense.

Shortly after the 2 Month Notice was served on February 21, 2020, the main home became no longer viable as a short-term rental business due to the pandemic, and was converted to a long-term rental.

Counsel for the landlord argued that the tenants were not entitled to any compensation as the landlord had followed through with their original intentions for a close family member, in this case the father of the landlord, to occupy the home, and had fulfilled their obligations to occupy the home for the full six month duration as required under the *Act*.

NE appeared as a witness in the hearing and testified that they had discovered that their partner was cheating on them, and decided to end the seventeen year relationship. As part of this separation, the two parties sold their home, as supported by the Contract of Purchase and Sale included in the landlord's evidentiary materials.

NE testified that they then moved in with the landlord's godmother until NE was able to move into the coach home. NE testified that after the tenants had vacated the home on April 30, 2020, NE prepared the home by painting, cleaning, and repairing the home for occupancy, and gradually moved their belongings in. NE testified that the electricity appeared to be hooked up when they moved into the coach home in the beginning of May 2020, and was not aware that they were responsible for activating a new account. NE subsequently signed up for an account on May 9, 2020 once they realized their misunderstanding.

NE confirmed that they moved out by October 31, 2020 as they had reconciled with their partner. NE testified that they had closed the account for the electricity as of October 10, 2020 as they gradually moved out of the rental unit, and prepared the home for occupancy by the new tenant as of November 1, 2020.

The coach home was also occupied by NE's sister and brother-in-law. JP was receiving medical treatment for Leukemia at the local hospital, and required temporary accommodation as they lived and operated a business out of town. On or about May 26, 2020 JP and AP moved into the basement suite. NE later invited the JP and AP to move into the two bedroom coach home. JP and AP returned to their home in early October

2020 once JP's medical treatment was completed. AP attended the hearing to confirm these details.

Analysis

Section 51(2) of the Act reads in part 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.

Residential Tenancy Policy Guideline #2A provides more clarity about the requirements of section 49 of the Act when ending a tenancy for landlord's use.

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

RTB Policy Guideline 2A further clarifies the meaning of “vacant possession”, and what it means to occupy a rental unit or home:

Vacant possession

*Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see **Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.*

In light of the evidence and testimony before me, I am satisfied that the landlord’s father did indeed move into, and occupy the home within the meaning of the *Act*, within a reasonable amount of time after the tenants moved out on April 30, 2020. I find the landlord and their father provided not only detailed testimony and evidence, but they also provided credible and reasonable explanations behind the events that unfolded, from why NE delayed the activation of the utilities, to why they had chosen to move out. I also find that NE had complete and full possession of the rental unit until November 1, 2022, when the suite was re-rented for \$2,100.00 per month. I am satisfied that NE had met the 6 month occupancy requirement. I accept that at the beginning and end of the tenancy that NE was in the process of slowly moving their belongings, which is a common practice for those moving without the financial or logistical resources to move in and out in one day. Regardless I find that the evidence does support that this tenancy was ended in order to allow NE to move in, and the evidence supports that NE did in fact move in, and occupy the suite for 6 months. I do not find that the suite was left vacant or unused, nor do I find that the suite was re-rented prior to November 1, 2020.

I did consider the fact that the advertisement did note October 1, 2020 as the available date, and the landlord’s explanation that this was simply a typo. As there is no way to determine the truth of this statement, I will focus on the facts. The rental unit was not rented out to a new tenant until November 1, 2020, after the suite was occupied by NE. Furthermore, a close analysis of the situation would show that the landlord actually suffered a financial loss, rather than a gain, due to the ending of this tenancy. The new tenant’s rent is \$2,100.00 per month, which is \$350.00 more per month than what the tenant applicants were paying. In light of the fact that no rent was collected from May 1, 2020 to October 31, 2020, the landlord lost \$10,500.00 in rent. Including the 1 month’s compensation for ending the tenancy, the total loss for the landlord was \$12,250.00. At only \$350.00 per month difference, the landlord would have to wait 35 months to recover this financial loss, a period of almost three years. This analysis clearly shows that the landlord gained little or zero financial benefit from ending this tenancy, which supports the landlord’s testimony that they ended this tenancy in order to assist their father during a difficult time.

I am satisfied that the landlord had fulfilled their obligations under the *Act* following the issuance of the 2 Month Notice. Accordingly, I dismiss the tenant's entire application without leave to reapply.

Conclusion

The tenant's entire 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: July 26, 2022

Residential Tenancy Branch