



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied on November 23, 2021 for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) and recovery of the cost of the filing fee.

The tenants and the respondent attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

There were no issues raised with regard to service of the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation relating to a 2 Month Notice, under section 51 of the Act and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on October 1, 2017, with the original landlord. The respondent/purchaser (respondent) purchased the property from the original landlord. The tenant said the tenancy ended on September 30, 2021, when they vacated the rental unit. The monthly rent at the end of the tenancy was \$2,300. Filed in evidence was a copy of the written tenancy agreement.

The rental unit was a single family home.

The Notice at issue in this dispute, issued by the tenant's original landlord, was dated July 25, 2021, and listed an effective date of September 30, 2021. Filed into evidence was a copy of the Notice.

As a reason for ending the tenancy, the Notice listed that all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intend in good faith to occupy the rental unit.

The tenants wrote in their application the following:

We were served Notice to end tenancy for Landlords use of property after (purchaser) purchased the house (rental unit address) We moved out Sep/30/2021 and (purchaser) posted the house for rent on Facebook Marketplace and Craigslist as early as Oct/7/2021. The house has since been re-rented for almost twice the rent we were paying. It is our believe that (purchaser) acted in poor faith and did not intend to move in or have a direct relative occupy the house.

[Reproduced as written except for redacting personal information to protect privacy]

In response to the tenants' claim, the respondent proceeded first in the hearing.

The respondent submitted that they purchased the rental unit with the intention of living there. The respondent wrote they wanted to retire in the city where the residential property was located (city) and took a job in that city in order to get used to it prior to retirement. The respondent wrote that they purchased the residential property with the intention of consolidating their real estate assets in order to downsize as their present house was becoming difficult to maintain.

The respondent wrote that on August 15, 2021, his wife had an accident, which left her unable to bear weight, resulting in wheelchair confinement for mobility. The landlord submitted that the residential property was not wheelchair accessible due to the number of stairs in the property, and as a result, they have been unable to move into the residential property.

The respondent submitted his wife was seen by an orthopaedic surgery on September 10, 2021, and was recommended for surgery. As there was a wait list for orthopaedic surgeries, the respondent's wife was put on a wait list. The respondent submitted that they were contacted and informed the respondent's wife would have the surgery on January 25, 2022, however, due to the surge in Covid cases due to the Omicron variant, the surgery was cancelled. The respondent said they are still waiting for the surgery to be scheduled.

The respondent submitted that both he and his daughter have to commute from their present home, as his wife requires someone with her at all times.

The respondent submitted that the monthly mortgage for the residential property was \$3,271, and as they were uncertain of his wife's surgery and prognosis, they decided to rent the residential property in the interim until they could move-in. The respondent maintained they could not afford two mortgages and would be "upside down" if they had to pay two mortgages.

The respondent confirmed that the residential property is re-rented and said that he believes he will have to serve their tenants with a 2 Month Notice when they are ready to move in.

Evidence filed by the respondent included photos of the residential property, including a photo of the entrance, showing the stairs in the residential property, a referral for a wheelchair and other equipment for mobility, a renewal for the wheelchair, a prescription

for pain medication for the respondent's wife, and an email notifying the respondent's wife of her surgery on January 25, 2022.

Tenant's response –

The tenants submitted that the respondent took possession of the residential property on October 1, 2021, and they saw the rental listings for the property on October 6 or 7, 2021. The tenants pointed out that the ads featured a clause that the respondent was looking for long term tenants and they were heartbroken they were not offered a chance to stay in the home. The tenants submitted they are now paying twice the amount of monthly rent for half the size as they had in the residential property.

The tenant submitted that the respondent's actions seem wrong and dishonest and that the respondent's evidence shows the rental unit is not being used for the stated purpose.

The tenants submitted that the respondent's current home also has stairs.

Additional evidence filed by the tenants were the rental listings for the residential property.

In response, the respondent said that the home they live in now has a bedroom and washroom on the main level being used by his wife, as it is wheelchair accessible.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The 2 Month Notice was given to the tenants listing that the respondent/purchaser or a close family member intends in good faith to occupy the rental unit.

Section 51(2) provides that if 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 if 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, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the undisputed evidence is that the respondent has not moved into the rental unit and that it has been re-rented, I find the respondent must pay the tenants the amount of \$27,600, the equivalent of 12 times the monthly rent of \$2,300.

However, Section 51(3) of the Act authorizes the Director to excuse the purchaser from paying the tenants the equivalent of 12 times the monthly rent if, in the Director's opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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.

Tenancy Policy Guideline 50E outlines 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 in a wildfire.

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.

The 2 Month Notice was served to the tenants on July 26, 2021, and even though I was not provided with the purchaser's written request to issue the tenants the Notice, I find it reasonable to conclude that the purchaser had by that time completed the purchase of the residential property. The undisputed evidence was that the purchaser took possession of the residential property on October 1, 2021.

I find the respondent's filed evidence shows that their wife was provided a wheelchair on August 30, 2021, which I find is sufficient evidence that their wife suffered a serious injury from an accident on August 15, 2021, as related by the respondent. The

undisputed evidence shows that the loan for the wheelchair was renewed on March 6, 2022, indicating the respondent's wife's continued confinement to a wheelchair.

Having reviewed the photos of the residential property, I find there to be a considerable amount of stairs.

The undisputed evidence was that the respondent's wife was subsequently scheduled for surgery for her injuries and that through no fault of the respondent, the surgery was cancelled.

In these circumstances, I find the respondent submitted sufficient evidence to show that the matters relating to his wife's accident resulting in her continued confinement could not be anticipated and were outside the purchaser's control. I find it reasonable that the respondent had to make the decision to stay in their current home as it was more suitable to his wife's wheelchair use.

I find that a life-altering accident confining the respondent's wife constitutes significant medical circumstance.

There was no evidence that the respondent simply changed their mind about moving into the rental unit.

For the above reasons, I therefore excuse the respondent from paying the tenants the monetary compensation as I find it would be unreasonable and unjust for the respondent to do so in light of his wife's medical circumstances.

As a result, I dismiss the tenants' application for monetary compensation without leave to reapply and for recovery of their filing fee.

Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent without leave to reapply and recovery of the filing fee is dismissed, due to extenuating circumstances as described herein.

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*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 11, 2022

Residential Tenancy Branch