



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 4, 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 evidence packages, and the Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding. No service issues were raised. 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

The Tenant stated that she was paying \$950.00 per month in rent before she moved out. The Tenant stated he received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) in June of 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:

- All of 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 intends in good faith to occupy the rental unit.

The Landlord explained that they purchased the house and signed the offer on or around June 15, 2021, and a copy of the purchase and sale agreement was provided into evidence. The Landlord also provided a copy of the Buyers Notice to Seller for Vacant Possession, whereby the Landlord requested vacant possession, pursuant to a Notice under the above noted ground.

The Tenant stated that after she moved out, she became aware that the Landlord didn't actually move into her suite, and use it for family purposes. The Tenant stated that the Landlord re-rented the unit for an increased rent, and she believes the Landlords intended to do this all along. The Tenant does not believe the Landlords ever intended to occupy the rental unit for either themselves, or close family members.

The Landlord explained that this house consists of a main floor, where he and his wife currently live, as well as two lower rental units in the basement, one of which was the subject rental unit (1 Bedroom unit). The Landlord stated that he and his wife, X.C., bought this house and their intention was to have X.C.'s parents move in once they arrived from China. The Landlord stated that he flew to China in July 2021, to meet X.C.'s parents, and bring them back to Canada to live in the rental unit. However, they decided they did not want to come anymore because they were worried about COVID. The Landlord stated that X.C.'s parents were worried that their vaccine wouldn't be sufficient to come to Canada, and after they watched the Chinese news, they decided it wasn't any safer in Canada than it was in China. As a result, X.C.'s parents decided to stay in China, and not come to Canada to live in the rental unit.

The Landlord stated that he flew back to Canada in September 2021, without X.C.'s parents. The Landlord stated that he and his wife, X.C., moved into the property sometime in November. The Landlord also stated that they re-rented the subject rental

unit on November 15, 2021, because X.C.'s parents no longer were coming to live there.

The Tenant stated that the Landlords should have known a long time ago that COVID was still present, as it has been around for 2 years. The Tenant stated there is no evidence to prove the X.C.'s parents were unable to come or that they ever intended to come.

The Landlord provided a letter from X.C.'s parents stating that their plan was to come stay with the Landlord once they took possession in October 2021. However, after finding out that they may have to quarantine in the hotel after coming to Canada, they were scared about coming. They also noted that they felt the pandemic was worse in Canada than in China.

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 RENOVATIONS 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 they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. I note the Landlord bought the rental unit and asked for vacant possession by way of the Buyers Notice to Seller for Vacant Possession, dated June 24, 2021. The Seller issued the Notice on June 29, 2021, and listed the named Landlord as the purchaser. The Notice was issued under the following ground:

- All of 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 intends in good faith to occupy the rental unit.

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 he accomplished the stated purpose on the Notice, which is that he or his close family members would be moving into the rental unit (the lower 1 bedroom unit). The Landlord stated that their initial plan was for his wife, X.C.'s, parents to move in. The Landlord also acknowledged that they never did move in, and as a result, the rental unit was re-rented a couple of months after the Tenant moved out.

As a result, I find it more likely than not that the Landlord breached section 51(2) of the Act given neither he, nor his close family moved into the rental unit for at least 6 months. This typically entitles the Tenant to 12 month's compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that he 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 explained that the plan was for his wife, X.C.'s, parents to move into the 1-bedroom basement suite once they took possession of the house in the fall of 2021. The Landlord stated that when he flew to China in July, he found out that X.C.'s parents decided that they did want to come to Canada anymore because they did not feel it was safe enough given the COVID pandemic. I note X.C.'s father provided a letter confirming they changed their minds, due to the fact that they may have to quarantine upon entry to Canada, and because they felt it was safer in China than in Canada. However, I note that the COVID-19 pandemic had been ongoing for over 1.5 years, by the time the Landlord asked for this Notice to be issued in June 2021. I am unclear on what changed from in and around time the Notice was issued, to when X.C.'s parents decided not to come a couple months later. There is no evidence proving that a quarantine at a hotel would have been a requirement, given they had a house to quarantine at. Further, I am not satisfied that X.C.'s parents concern over it being less safe in Canada qualify as an extenuating circumstance, since the pandemic was not new at that time. If X.C.'s parents had intended to move to the subject rental unit, particularly during a pandemic, it seems reasonable that they would have researched the safety and viability of this move prior to Notice being issued on the basis that they would be moving in.

I am not satisfied that there were any "extenuating circumstances", such that it would be unreasonable or unjust for the Landlord to pay the compensation.

I award the Tenant \$11,400.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$950.00.

Conclusion

I grant the Tenant a monetary order in the amount of \$11,400.00. 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 04, 2022

Residential Tenancy Branch