



Dispute Resolution Services

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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 February 10, 2022, May 9, 2022, and August 29, 2022, by conference call. The first two hearings dealt with medical and service-related issues, and the final and third hearing was held to discuss the merits of the application. 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

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. At the final hearing, both parties confirmed receipt of each other's evidence, and no issues were raised with respect to service of the documents.

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 12 month's worth of rent pursuant to section 51 of the Act?

Background and Evidence

Both parties agree that monthly rent was \$3,995.00 per month. The Tenant stated he received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on or around May 24, 2019, and moved out on or around July 31, 2019, the effective date of the Notice. 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 Tenant stated that he is seeking 12 month's compensation because neither the Landlord, nor a member of his family, ever moved into the property, as laid out in the Notice. The Tenant stated that the Landlord listed the property for sale on September 23, 2019, and sold it on October 7, 2019. The Tenant provided an email from G.J. who stated that no one had moved into the unit, as of September 1, 2019. The Tenant provided another email from G.J. from September 11, 2019, stating that he met with the Landlord's realtor, who confirmed that the Landlord is coming to Canada by the end of September or sometime in October, but that the Landlord may be putting the place up for sale. Another email from G.J. was provided, confirming that he saw the rental unit get posted for sale in late September 2019.

The Tenant also provided a few emails he had with the Landlord's property manager. There was an email dated September 5, 2018, indicating that the Landlord was contemplating selling the rental unit. An email was dated January 17, 2019, and indicated that the Landlord was hurting "financially" and that he wanted to sell the property. One of the emails is dated May 22, 2019, and indicated that the Landlord was having financial challenges, and may be needing to sell the rental unit. Another email from May 25, 2019, was provided into evidence which was sent from the Landlord's property manager, speaking about the fact that the Landlord was in a position that warranted selling the rental unit, and the rental unit was not presentable the way the Tenants had it set up. The email indicated that the owner is still questioning what he wanted to do.

The Tenant stated that he believes there is a possibility that the Landlord fabricated his medical evidence because there are no photos of his entire person, with the injury. The Tenant also pointed to a couple of mistakes in the Landlord's self defense letter, and

denies that his wife had two strokes, and that the Landlord was in any way subsidizing or helping them with paying their rent.

The Landlord explained that he was losing money when he was renting the property to the Tenants, and had contemplated selling the unit at certain points, but he still had plans to move here, after he issued the Notice and winded down his business in China. The Landlord acknowledged that he was having financial difficulties in 2019, and he had planned to come to Canada in February 2019. However, he opted to stay in China to continue working as a self-employed photographer until the fall of 2019. The Landlord stated that part of the reason he opted to delay coming to Canada was to wind down his business in China, and make as much money as he could, prior to moving here.

The Landlord stated that while he was working in China, trying to wind down his business, he broke his leg. The Landlord explained that he broke his tibia in 3 places, which is a major bone in the leg, on September 18, 2019. The Landlord stated that he was hospitalized for well over a week, and he had surgery on or around September 20, 2019, to repair his leg, and put pins in to help it heal. The Landlord explained that he was totally confined to a bed for over 3 months, in China, and he could not walk, work, or do anything physical. The Landlord stated that this incident drastically impacted his finances, his income, and his ability to move.

The Landlord explained that right after his surgery, he contacted his realtor in Canada, and he listed the rental unit for sale on or around September 20, 2019. The Landlord acknowledged selling the property on or around October 7, 2019, but stated he only sold the property once he became aware of the severity of his injury and the prolonged recovery he would face.

The Landlord provided a copy of the medical report, which is in a foreign language. However, he also provided a copy of the translated medical documents, along with a certification showing the translator is certified internationally, to perform the translations. The medical documents list the Landlord as the patient, and specify he had a traumatic leg injury on September 18, 2019, and had surgery on September 20, 2019. The Landlord also provided a photo of the injury after surgery, a copy of the x-ray, as well as a picture taken a couple of years later, when this application was uploaded. The Landlord denies that he ever altered any of the documents, or photos.

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 Landlords 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. The Landlord selected the following ground on the Notice:

- 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).

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.

I note the Landlord acknowledged that he did not follow through with the stated purpose or grounds listed on the Notice. As such, I am satisfied the Landlords breached section 51(2) of the Act.

This 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 they 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*

I have considered the Landlord's explanation regarding why the rental unit was sold, rather than occupied by himself or a close family member. I have also considered the Tenant's statements made and evidence presented in the hearing. I note the Tenant is suspicious because there is no overall photo of the Landlord, with his injury, and the photo is zoomed in. I accept that the photos of the Landlord's injury are zoomed in. However, I find the Landlord's evidence and testimony regarding the injury, including the nature and extent of the injury, is more detailed and compelling than the Tenant's assertion that the photos and evidence may be fabricated, false, or unreliable. I note the Landlord has provided, what appears to be, a reliable translation, by a licenced third party, of the medical documents and records. These records corroborate that the Tenant suffered a significant, life altering, leg injury on September 18, 2019, which was in the month following when the Tenant vacated the rental unit.

I accept that this injury would have materially impacted the Landlord's finances, and his ability to work, live, and potentially move across the globe (into the rental unit). Although it appears the Landlord was having concerns about his finances, prior to issuing the Notice, I accept his explanation that he planned to remain in China until the fall of 2019, to allow the Tenant ample time to move out, to try to wind his business down, and earn as much as he could before he moved to Canada.

When viewing the totality of the situation, I find this situation is extenuating such that it would have substantially contributed to the Landlord's inability to accomplish the stated

purpose, as his injury occurred in and around the time he was supposed to be moving across the globe, into the rental unit. Although the exact timeline of the Landlord's initial plan to formally move to Canada in the fall of 2019 is not clear, I am satisfied that he intended to move, and was waiting to come until he could finish and wind down his business over the summer of 2019. It was not until the Landlord's significant leg injury that he listed the rental unit for sale. Overall, I find the Landlord has sufficiently demonstrated that the circumstances are sufficiently extenuating. Pursuant to section 51(3), I excuse the Landlord from having to pay 12 months compensation for breaching section 51(2).

I dismiss the Tenant's application, in full, without leave.

Conclusion

I dismiss the Tenant's application in full, without leave.

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: August 29, 2022

Residential Tenancy Branch