



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) and recovery of the cost of the filing fee.

The tenants, the landlord and the landlord's legal counsel (counsel) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all 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. The parties confirmed receipt of the other's evidence.

I was provided evidence from the parties including: testimony and written submissions, all of which has been reviewed. Not all evidence has been referenced in this Decision. The principal aspects of the tenant's claims and the landlord's responses and my findings around them are set out below.

Further, I have used my discretion under Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 3.6 to decide whether evidence is or is not relevant to the issues identified on the application and decline to consider evidence that I deem is not relevant.

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 a monetary order pursuant to section 51 of the Act and recovery of the filing fee?

Background and Evidence

The tenancy began in February 2019 and the tenants vacated the rental unit on January 31, 2021. The monthly rent at the end of the tenancy was \$2,400, according to the tenants.

The evidence showed that the landlord issued the tenants a 2 Month Notice, which was dated December 18, 2020, and listed an effective date of February 28, 2021. The tenants vacated in response to the 2 Month Notice.

The reasons for ending the tenancy stated on the Notice were that the rental unit will be occupied by the landlord or the landlord's spouse, the child of the landlord or the landlord's spouse, and the father and mother of the landlord or landlord's spouse.

Filed in evidence by both parties was the 2 Month Notice.

The tenant's monetary claim is \$28,800, equivalent of 12 times the monthly rent payable under the tenancy agreement, at the end of the tenancy, for receiving the landlord's 2 Month Notice.

The tenants wrote in their application the following:

This is being requested as we were given a 2-month notice to vacate, for the owners were moving back in. We then discovered that they had sold the home within 4 months from the date we moved out.

[Reproduced as written]

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

Prior to the legal submissions, counsel was asked if they intended on claiming extenuating circumstances, and counsel said no.

Counsel submitted a written statement of the landlord, which was presented at the hearing.

The landlord wrote that they owned the residential property from February 2018 until August 31, 2021. At the time the Notice was issued, the landlord lived with her parents. The landlord said she wanted to move back into the rental unit and as a result, her parents sold their home, as they wanted to live close to their daughter, son-in-law and granddaughter. That sale was completed on March 5, 2021. The landlord wrote her parents' intention was to always move back to (*city*) sometime in the future.

The written statement also provided, as follows:

5. On about December 18, 2020, I gave notice to our tenants in the Property that my family and I intended to move into the Property. It was also our intention that my parents would live in the Property with us, because they had not purchased another home in which to live after selling their home on [REDACTED]. It was much harder to purchase a property than they expected since it was at this exact time, house prices were increasing by the week. They were worried that they were not even going to be able to purchase something with the way prices were skyrocketing, so they had to assess what their options were. My Parents moved all of their furniture and their belongings in the property and lived with us.
6. The tenants moved out of the Property on January 31, 2021 and my husband and I began moving our belongings into the Property. We began living in the Property in February of 2021 and my parents began living with us in the Property on about March 5, 2021.

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

The landlord further wrote that her husband was unexpectedly laid off on December 31, 2020 and his lay-off continued until July 2021.

The landlord wrote that her parents purchased another home and moved out of the residential property in late May or early June.

Due to the landlord's financial struggles, they decided to sell the residential property and on June 29, 2021, they sold the property with the completion and possession date for

the sale being August 31, 2021. The landlord wrote they moved out of the property in late August 2021.

At the hearing, counsel argued that the landlord did live and occupy the rental unit for 6 months and their intention was to live there, but due to their income going from double to single, they had to sell the property. Counsel argued the financial hardship of the landlord in the reason the home was sold.

Counsel argued that the 2 Month Notice did not say anything about the 6 month requirement.

Additional filed evidence included a copy of a Contract of Purchase and Sale for the residential property, dated June 29, 2021, for a completion date of August 29, 2021, and a possession date of August 31, 2021 and a copy of the Contract of Purchase and Sale for the landlord's parents' house.

Tenants' response –

The tenants submitted that the Contract for the landlord's parents' home included the name of the landlord as a co-seller.

Analysis

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

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

In the case before me, the undisputed evidence shows that the tenants were issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act. In this case, the Notice listed that the rental unit will be occupied by the landlord or the landlord's spouse, the child of the landlord or the landlord's spouse, and the father and mother of the landlord or landlord's spouse.

My interpretation of this 2 Month Notice is that landlord or spouse, the landlord's child or spouse, and the landlord's father and mother must all occupy the rental unit for the

specified time period. In this case, the specified time period I find is March 1, 2021 through August 31, 2021, 6 months after the effective date.

Therefore, the parties listed on the 2 Month Notice must occupy the rental unit for six months starting within a reasonable amount of time after the tenancy ended to fulfill the purpose stated on the 2 Month Notice that was served upon the tenants.

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.

Although counsel argued that the 2 Month Notice did not say anything about the 6 month requirement, this is incorrect as page 4, section 5 of the Notice issued by the landlord and filed in evidence does state this requirement of the Act.

The landlord's own evidence is that the landlord's father and mother moved out of the residential property in late May or early June 2021. In that one respect alone, I find the landlord did not fulfill the stated purpose, as the 2 Month Notice was issued, in part, due to the landlord's mother and father occupying the rental unit.

Additionally, the landlord also confirmed they did not occupy the rental unit for the entire 6 months after the effective date of February 28, 2021. The landlord's evidence shows that the landlord sold the residential property in June 2021, and vacated in late August 2021. I therefore find the landlord must pay the tenants the amount of \$28,800, the equivalent of 12 times the monthly rent of \$2,400.

Section 51(3) of the Act authorizes me to excuse the landlord from paying the tenant the amount required under subsection (2) if, in my 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 50G, under extenuating circumstances, sets out 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.

I find the landlord submitted insufficient evidence of extenuating circumstances. I find the evidence shows that it was the landlord's parents' choice to vacate the residential property early, by early June 2021. No financial hardship was claimed or asserted for the landlord's mother and father.

I also do not find financial hardship claimed by the landlord is anything akin to the examples of extenuating circumstances listed in Policy Guideline.

As I have found the landlord must pay the tenants compensation equal to 12 times the monthly rent due under the tenancy agreement, or \$2,400, and as I have found insufficient evidence that extenuating circumstances prevented the landlord from using the rental unit for that stated purpose for at least 6 months' duration, I find the tenants have established a monetary claim of \$28,800.

I find merit with the tenants' application and award them recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

As a result, I grant the tenants a monetary order (Order) of \$28,900, the equivalent of monthly rent of \$2,400 for 12 months, or \$28,800, and the cost of the filing fee of \$100.

Should the landlord fail to pay the tenants this amount without delay, the tenants must serve the Order on the landlord for enforcement purposes by means under section 88 of

the Act. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent of \$28,800 and recovery of the filing fee is granted. The tenants have been granted a monetary order for \$28,900.

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: August 25, 2022

Residential Tenancy Branch