



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

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

:

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

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the tenant entitled to a monetary order the equivalent of twelve months' rent as claimed?

Background and Evidence

The landlord gave the following testimony. The tenancy had a monthly rent payable of \$2200.00 due on the first of each month. On November 16, 2020 the landlord served the tenant with a two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by January 31, 2021. The ground for the Notice was:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

JY testified and provided written submission as follows. JY testified that the tenants moved out on January 3, 2021. JY testified that SS was moving to Vancouver from Toronto and would be moving into the suite. SS is the son of the owner YLC. JY testified that SS had begun the process of buying furniture for the suite and arranging a move in date with the strata. YLC testified that her son's mental health started to decline in late December 2020 and by January 2021 it had gotten to the point where they no longer felt he could live on the 20th floor of an apartment building by himself. YLC was concerned he would do harm to himself by living on such a high floor.

SS testified that he was also worried that he may harm himself. SS testified that he stayed in the unit when he could, but his mental state was such that he couldn't stay there alone. SS testified that his parents requested that the tenants let them re-rent the unit, but they denied the requests. JY submits that the tenants asked on two separate occasions that if the unit came up for rent that they would want it back, however they refused when given the opportunity.

TT testified that there was very little communication and information provided as to who was going to move in. AM testified that he is very empathetic to the landlord's situation but feels that since they didn't comply with the notice, 12 months rent as compensation should be paid.

Analysis

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

Section 51(3) provides that: 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 50 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing one's mind or failing to adequately budget to be examples of circumstances that may not be extenuating. An example provided of a situation that may be considered extenuating is: A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.

The landlords submit that the deteriorating mental health of SS and SS' own testimony that he had ideas to harm himself and could not live on the 20th floor alone are an example of extenuating circumstances. The landlord and SS would have no way of knowing that his mental health would decline after the tenants moved out. In addition, the landlords offered the unit back to the tenants.

In the tenants own written submissions it is noted as follows :

“On Jan.27th I received an email from Winnie at Noble & Associates Property Management saying the landlords plans had changed and asked if we wanted to move back in. We replied no because we were in a new lease. Winnie asked if the owner could rent it out again. We said no because the owner had given us notice because he son was moving in, so re-renting it would be in breach.”

SS testified that he did occupy the unit when he could because the tenants would not allow his mother to re-rent the unit. SS visited the unit from time to time from March 19 to September 6, 2021 until they finally re-rented it.

I do not accept the tenant’s submission that the landlord acted in bad faith, quite the contrary. When SS’ health was such that he didn’t feel he could move into the unit, the landlord’s property manager contacted the tenants to see if they wished to take back the unit. This is not a pattern of deceit or bad faith, but a pattern of transparency and good faith. Based on the above, I find that due to extenuating circumstances of SS’ unforeseen mental health issues, the landlord was unable to have their son move into the unit full time as originally planned, accordingly; the tenants are not entitled to any compensation.

Conclusion

The tenant’s application is dismissed in its entirety 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: August 29, 2022

Residential Tenancy Branch