



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by an interpreter.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the tenants' materials and had not served any evidence of their own. Based on their testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenants provided the following undisputed facts. The monthly rent for this periodic tenancy was \$1,939.00 payable on the first of each month. A security deposit of \$875.00 and pet damage deposit of \$875.00 were collected at the start of the tenancy and have been dealt with in accordance with the *Act*. The rental unit is a single detached home.

The named respondent is the purchaser of the rental property who gave written request to the previous landlord to issue a 2 Month Notice to End Tenancy for Landlord's Use. A copy of the 2 Month Notice dated January 4, 2021 was entered into evidence. The notice identifies the respondent as the purchaser and provides the reason for the tenancy to end as:

All of the conditions for 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 confirmed that they requested the seller issue the 2 Month Notice to gain vacant possession of the rental unit.

The tenants vacated the rental unit on April 5, 2021 in accordance with the 2 Month Notice. The landlord testified that they began occupying the rental unit on April 6, 2021 but ultimately changed their mind as their children did not enjoy the rental property and moved out sometime in July 2021. The landlord confirmed they retained a property management company who rented out the property as of August 1, 2021 and have not resided in the rental unit since that time.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states that a landlord, or the purchaser of a property, must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if a tenant receives a notice to end tenancy for landlord's use of property and:

- (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,

In the present case the landlord gave testimony that they used the rental unit for the purposes stated on the 2 Month Notice, occupying the rental unit for ordinary residential purposes, from April 6, 2021 to sometime in July 2021, a period of approximately 4 months. The landlord gave undisputed testimony that they have rented out the property as of August 1, 2021.

Based on the undisputed evidence of the landlord I find that the rental unit was not used for the stated purpose for at least 6 months duration. I accept the evidence that the landlord only occupied the rental unit for a period of 4 months.

Section 51(3) of the *Act* 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 would likely not be considered extenuating.

The undisputed evidence of the landlord is that they changed their mind about residing in the rental unit. The landlord testified that their children did not enjoy the rental property and the landlord decided to move out rather than continue to use the rental unit for at least 6 months.

As noted above, changing one's mind is not an extenuating circumstance. The undisputed evidence before me is that the landlord simply changed their mind about residing in the rental unit. There is no evidence that this decision was motivated by anything more than the capricious whims of the landlord's children. I find this is not extenuating circumstances that would excuse a landlord from their obligation to make payment pursuant to section 51.

I find, based on the evidence of the parties, that the landlord failed to use the rental unit for the purpose stated on the Notice to End Tenancy for a period of at least 6 months. I find that no extenuating circumstances exist that would excuse the landlord from paying an amount equivalent to 12 months' rent in accordance with section 51(2) of the Act.

Consequently, I find that the tenants are entitled to a monetary award of \$23,268.00, the equivalent of 12 times the monthly rent for this tenancy.

As the tenants were successful in their application, they are also entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$23,368.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: August 22, 2022

Residential Tenancy Branch