



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, 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 a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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 parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the relief sought?

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 parties agree on the background facts. There was a tenancy agreement between the tenant and the previous owner of the property where monthly rent was \$1,600.00 payable on the first of each month. The rental unit is a basement suite of a single detached home.

The previous owner issued a 2 Month Notice to End Tenancy for Landlord's Use dated November 20, 2021 at the respondent landlords' written request as all of the conditions for the sale of the rental property had been satisfied and the rental unit was to be occupied by the landlords' close family member. A copy of the 2 Month Notice was submitted into evidence.

The tenant vacated the rental unit in accordance with the 2 Month Notice on January 23, 2022.

The parties agree that the rental unit has never been occupied by the landlords or their close family member.

The landlords submit that the intention was for the rental unit to be occupied by landlord NM's parent. NM's parent was to move from another province to the rental unit. However, on December 6, 2021, medical test results were received showing the landlord's parent was afflicted with myelofibrosis, a type of bone marrow cancer. Due to the diagnosis and the need for ongoing treatment the parent was unable to relocate and move into the rental unit. Copies of the medical records were submitted into documentary evidence.

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 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 double the monthly rent payable under the tenancy agreement.

The reason given for the tenancy to end on the 2 Month Notice is that all of the conditions for sale of the rental unit have been satisfied and the purchaser or their close family member intends to occupy the rental unit. The respondents confirmed they are the purchasers of the property and they requested the 2 Month Notice be issued as they intended for the rental unit to be occupied by a family member. The parties agree that the rental unit was never occupied by the landlords or their close family member.

I accept the evidence of the parties that the landlords failed to accomplish the stated purpose of the 2 Month Notice, to occupy the rental unit, and have instead found new occupants to rent the suite.

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.

I accept the undisputed evidence of the landlord that their family member has been diagnosed with an illness which requires regular treatment at a hospital. I am satisfied, on a balance of probabilities, based on the undisputed testimony of the landlords and the documentary materials including the medical records that there are circumstances which caused the change.

I find the landlords' evidence of the circumstances in this instance to be reasonably characterized as extenuating. I find that a sudden diagnosis of a chronic disease where treatment requires regular attendance at a medical facility is circumstances that could not be reasonably foreseen and would prevent individuals from relocating or fulfilling the original intent listed on a Notice to End Tenancy.

I find the decision not to occupy the rental unit as intended but to continue residing in their present location, attending medical facilities for treatment is not an instance of changing one's mind but a reasonable and inevitable conclusion due to the circumstances. I find that the circumstances faced by the landlords and their family members made it unreasonable to move from another province and occupy and reside in the rental unit as they had originally intended without serious risk to the life and health of the family members. I find that these are circumstances that would make it unreasonable and unjust to order a monetary award against the landlords, and are properly characterized as extenuating.

Accordingly, I dismiss the tenant's application as I find that while the landlords did not accomplish their stated purpose for issuing the 2 Month Notice to End Tenancy, there are, in my view, extenuating circumstances that excuses the landlords from accomplishing the purposes.

Conclusion

The tenant's application is dismissed 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: September 27, 2022

Residential Tenancy Branch