



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNECT FFT

Introduction

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

RE appeared for the tenants in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application') and evidence, which was served to the landlord by way of registered mail on June 2, 2022. The tenants provided proof of service in their evidentiary materials, which show that the landlord had signed for the package. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord deemed served with the tenants' application and evidence on June 7, 2022, 5 days after mailing. The landlord did not submit any evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation for money owed under the Act, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on December 7, 2018, and ended on October 1, 2021. Monthly rent was set at \$2,800.00, payable on the first of the month. The tenants' security and pet damage deposits were returned at the end of the tenancy.

The tenants were served with a 2 Month Notice dated September 9, 2021, with an effective date of December 1, 2021 after the home was sold to the new landlord. The tenants moved out, and discovered that the landlord had advertised the home for much higher rent, \$4,750.00 per month. The tenants submitted copies of the advertisements in their evidentiary materials. The tenants sent an email on December 13, 2021 inquiring with the landlords whether the home was still for rent, and the landlords confirmed that the home was still available. The tenants later confirmed with the current tenants that they were renting the home from the landlord.

The landlord confirmed that the home was re-rented, but provided the following explanations: The landlord testified that they had lived in another province for 10 years, and the "rules are different here" and "nobody guided us". The landlord testified that their circumstances had changed and the landlord's husband suffered a severe heart attack. The landlord was unable to confirm the exact date when their husband had the heart attack, and when questioned several times finally responded "a year and a few months".

Analysis

Section 51(2) of the Act reads in part as follows:

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.

Policy Guideline #50 states the following about "Extenuating Circumstances" in the context of compensation for ending a tenancy under section 49 of the Act.

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

These are 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.*

- *A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.*
- *A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.*

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.*
- *A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.*

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlord had re-rented the home instead of occupying it. In consideration of Policy Guideline #50 and the definition of “extenuating circumstances”, I find that the reasons provided by the landlord fail to meet the criteria for “extenuating circumstances”.

The landlord provided two explanations for why they should be excused from having to compensate the tenants. The landlord testified that they were unaware of the different legislation in this province. I note that although the landlord may not have been informed by their realtor of the relevant legislation, the onus is on the landlord to comply with the legislation and fulfil their obligations regardless of whether they were aware of the rules or not. This explanation does not qualify as an extenuating circumstance.

The landlord also testified that they were unable to move in due to a change in circumstances that involve a heart attack suffered by the landlord’s spouse. Although I am sympathetic towards the fact that a family member suffered a medical emergency, I note that the landlords failed to provide sufficient evidence to support how the change in circumstances would qualify as an extenuating circumstance. I find that the landlord had ample time to prepare for the hearing, and submit evidence, but failed to do so. Furthermore, the landlord was unable to confirm the date when the medical emergency had taken place. For these reasons, I am not satisfied that the landlord had established how they were unable to fulfil their obligations due to extenuating circumstances.

I find the explanations provided by the landlord do not meet the definition of extenuating circumstances as set out above. Accordingly, I find that the tenants are entitled to

compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the purchaser's noncompliance. I issue a monetary award to the tenants in the amount of \$33,600.00.

As the tenants were successful in their claim, I allow them to recover the filing fee.

Conclusion

I issue a \$33,700.00 Monetary Order in favour of the tenants for compensation under section 51(2) of the *Act*, and for recovery of the filing fee.

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: October 18, 2022

Residential Tenancy Branch