



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants February 19, 2022 (the “Application”). The Tenants applied as follows:

- For compensation because the Purchasers ended the tenancy and have not complied with the Act or used the rental unit for the stated purpose
- To recover the filing fee

The Tenants and Purchasers appeared at the hearing. The Purchasers called their son, M.S., as a witness at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Purchasers confirmed receipt of the hearing package. The Purchasers confirmed there are no service issues with the Tenants’ evidence. The Tenants confirmed receipt of the Purchasers’ evidence. During the hearing, the Tenants testified that they received the Purchasers’ evidence the day before the hearing. The Tenants acknowledged the Purchasers sent the evidence September 28, 2022, by registered mail. The Tenants testified they could not pick up the mail earlier because they were away.

I note that the Purchasers served their evidence on the Tenants in accordance with section 88(c) of the *Residential Tenancy Act* (the “Act”). Pursuant to section 90(a) of the *Act*, the Tenants are deemed to have received the evidence October 03, 2022. I acknowledge that the Tenants testified they did not receive the evidence October 03,

2022, because they were away. As explained in RTB Policy Guideline 12, the Tenants can rebut the deeming provision; however, the Tenants were required to submit compelling evidence that they could not pick up their mail prior to October 12, 2022. I do not find the Tenants' verbal testimony that they were away sufficiently compelling to rebut the deeming provision. I find the Tenants should have provided documentary evidence showing they were away. In the absence of compelling evidence rebutting the deeming provision, I find the Tenants received the evidence October 03, 2022. I find the Purchasers complied with rule 3.15 of the Rules in relation to the timing of service of their evidence.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation because the Purchasers ended the tenancy and have not complied with the Act or used the rental unit for the stated purpose?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Tenants sought \$15,100.00 pursuant to section 51 of the *Act* for the Purchasers failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 29, 2021 (the "Notice").

The Tenants submitted their written tenancy agreement with the prior owners of the rental unit. The parties agreed the tenancy ended December 31, 2021. The Purchasers testified they took possession of the rental unit January 06, 2022.

The parties agreed the Notice was served on the Tenants. The grounds for the Notice are that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord in writing, to give the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

There is no issue that neither the Purchasers nor their close family member occupied the rental unit after the Tenants moved out because the parties agreed on this.

The Purchasers testified that extenuating circumstances prevented them from following through with the stated purpose of the Notice.

The Purchasers provided written submissions which explain the extenuating circumstances which prevented them from following through with the stated purpose of the Notice. Purchasers G.S. also provided testimony at the hearing. The Purchasers stated that they had the Notice issued so their son, M.S., could move into the rental unit. The Notice was issued October 29, 2021. At the time, M.S. played soccer. In September, M.S. started having knee pain and had an x-ray done. Further tests were required. The parties did not know the extent of the issue or how long the pain would last. On November 15, 2021, M.S. had an MRI, and it was discovered M.S. had chronic Osgood-Schlatter disease. The knee pain did not improve and got worse. Walking up stairs became too painful for M.S. The entrance to the rental unit involves climbing stairs. The parties decided M.S. would live with the Purchasers rather than at the rental unit due to the issue with M.S. climbing stairs. The rental unit was re-rented after the Purchasers unsuccessfully attempted to have their father move into the rental unit.

In response to questions, Purchaser G.S. testified that they did not know how serious the knee pain issue was until late November after M.S. got an MRI and they met with a doctor about the results.

M.S. testified at the hearing as follows. M.S. intended to move into the rental unit. One of the main reasons the Purchasers bought the house the rental unit is in is because M.S. was so fond of the rental unit. At the start of September, M.S. was having knee pain; however, it was not that bad. In September, M.S. had an x-ray; however, their condition was not diagnosed at that time. In November, M.S. got an MRI confirming they were suffering from Osgood-Schlatter disease. M.S.'s knee has continued to get worse. M.S.'s knee becomes inflamed due to the disease. It is very difficult for M.S. to climb stairs due to the disease. The disease causes muscles and tendons to stretch thin and become weak. Going up stairs requires M.S. to put pressure on their knee which makes their knee buckle. M.S. could not move into the rental unit due to the flight of stairs leading up to the unit.

The Purchasers submitted documentary evidence supporting their testimony including medical documents, travel documents and documents about M.S.'s previous residence.

Most of the Tenants' submissions were made in the form of questions to Purchaser G.S. The Tenants took issue with the Purchasers not telling them they could stay after M.S.'s MRI November 15, 2021. Purchaser G.S. testified that they did not receive the MRI results immediately because they had to meet with M.S.'s doctor to get the results. Purchaser G.S. testified that their focus at that point was on M.S., how bad the situation was and what M.S.'s future was going to be. Purchaser G.S. testified that the disease was not known to the Purchasers and M.S. and so it was not until later that they found out M.S. was not going to improve within a short period. The Tenants suggested that the Purchasers should have known how bad M.S.'s condition was given M.S. had to get an MRI. The Tenants took issue with the rental unit being re-rented for higher rent. Purchaser G.S. acknowledged the rental unit was re-rented February 15, 2022, for \$1,900.00 in rent versus the \$1,250.00 the Tenants were paying. The Tenants suggested that the Purchasers should have moved into the rental unit. Purchaser G.S. testified that the Purchasers do not need the space and like where they live. The Tenants questioned why the Purchasers did not sell the house given M.S. cannot move into it. Purchaser G.S. testified that the Purchasers have considered selling the house; however, selling it within one year of purchasing it would cause financial issues. The Tenants suggested that the timelines are off, and M.S. would not have been able to get an x-ray or MRI within the period claimed.

The Tenants provided the following further submissions. M.S.'s knee pain was a prior issue before the Purchasers bought the house. The dates referred to do not line up at all. X-rays can take three months to get, and MRIs take 11 weeks. M.S. would not have gone for x-rays and an MRI if they were not in pain.

The Tenants submitted the Notice and their prior tenancy agreement.

Analysis

The Notice was issued pursuant to section 49(5) of the *Act* which states:

- (5) A landlord may end a tenancy in respect of a rental unit if
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit...

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been 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 applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Purchasers have the onus to prove extenuating circumstances prevented them from following through with the stated purpose of the Notice. The standard of proof in a dispute resolution hearing is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I find the Purchasers have proven extenuating circumstances prevented them from following through with the stated purpose of the Notice. I accept the Notice was issued so M.S. could move into the rental unit. I accept M.S. started having knee pain before the Notice was issued but did not yet know the exact cause or extent of the knee pain. I accept it was not until after November 15, 2022, that the Purchasers and M.S. knew M.S. had chronic Osgood-Schlatter disease. I accept this disease makes it difficult for M.S. to walk up stairs. I accept the entry to the rental unit has stairs. I accept M.S. could not longer move into the rental unit given their diagnosis, inability to walk up stairs and the stairs leading up to the rental unit. I accept the focus of the Purchasers in November and December was on M.S. and their situation, versus on the Tenants. I also accept that the Purchasers and M.S. did not know immediately what the cause of the knee pain was, the extent of the problem or the outlook for M.S.

I accept the above facts because the Purchasers provided a written statement outlining these, Purchaser G.S. provided affirmed testimony about these, M.S. provided affirmed testimony about these and the Purchasers provided documentary evidence that supports the testimony of Purchaser G.S. and M.S. I found the testimony of Purchaser G.S. and M.S. compelling. Nothing about the testimony of Purchaser G.S. or M.S. caused me to question the reliability or credibility of their testimony.

The Tenants did not provide documentary evidence that calls into question the reliability or credibility of the Purchasers' evidence. I did not find the Tenants' questions or suggestions during the hearing compelling. I found some of the Tenants' suggestions baseless, such as their own opinions about how long x-rays and MRIs take to schedule and that the Purchasers and M.S. should have known the future of M.S. from the start of the knee pain. I also found some of the Tenants' suggestions irrelevant, such as why the Purchasers did not move from their home to the rental unit and why the Purchasers did not sell the house that the rental unit is in. The issue here is whether M.S. intended to move into the rental unit, whether M.S. did move into the rental unit and, if M.S. did not move into the rental unit, why. The Purchasers moving into the rental unit, which was not their plan, and the Purchasers selling the rental unit, which was not their plan, is not important.

I accept that M.S.'s knee pain was an issue prior to the Notice being issued because the Purchasers and M.S. acknowledged this. This was never in dispute. Purchaser G.S.'s point is that the Purchasers and M.S. did not know or understand the root of the problem, extent of the problem or outlook for M.S., which I find reasonable given the nature of the problem and resulting diagnosis. I find the dates provided do line up. Although not exact, the general timeline outlined in the Purchasers' evidence is that M.S. started feeling knee pain, got an x-ray in September, got an MRI in November and found out the root of the problem, extent of the problem and outlook for M.S. in November and December. This timeline makes sense given the medical documents submitted and testimony of Purchaser G.S. and M.S. I also note that I do not accept that the Tenants have any knowledge of how long it did take, or should have taken, M.S. personally to get an x-ray or MRI.

Given the above, I find the Purchasers proved on a balance of probabilities that it is more likely than not extenuating circumstances prevented them from following through with the stated purpose of the Notice. Section 51(3) of the *Act* applies, and the Purchasers are excused from paying the Tenants compensation pursuant to section 51(2) of the *Act*.

Given the Tenants have not been successful in the Application, they are not entitled to recover the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 14, 2022

Residential Tenancy Branch