



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LAM AND PATEL INVESTMENTS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNECT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for June 17, 2022.

This hearing dealt with the tenant's 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.

AP represented the former landlords, while the respondent GK attended the hearing with their legal counsel, GS. 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.

As the parties were in attendance, I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the purchaser's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

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 February 16, 2017, with monthly rent set at \$2,050.00, payable on the first of the month. The tenant's security and pet damage deposits of \$1,000.00 each deposit were dealt with at the end of the tenancy.

It was undisputed by both parties that this tenancy had ended on June 15, 2021 after the tenant was served with a 2 Month Notice by the landlord on April 12, 2021 after the home was sold to GK. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "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 this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit". A copy was included as part of the tenant's evidence. The tenant also included a letter dated April 12, 2021, written and signed by GK and addressed to the tenant's former landlord, requesting that the landlord give the tenant a 2 Month Notice to End Tenancy in order for GK or a close family member to occupy the property.

The tenant is seeking compensation as GK did not use the home for the stated purpose on the 2 Month Notice. GK confirmed in the hearing that the intention was to move in with their father, but due to a sudden and unforeseen change in circumstances, GK had to assign the Contract of Purchase and Sale to a new Buyer on May 15, 2021.

GK testified that their father's health had deteriorated significantly, and could no longer climb stairs. As the home had stairs, and GK's father resided with the family, GK had to purchase a new home which contained a bedroom on the ground floor. GK provided a copy of the original Contract of Purchase and Sale dated February 26, 2021, the Assignment of Contract of Purchase and Sale dated May 15, 2021, as well as the Contract of Purchase and Sale for the new home dated April 17, 2021. The landlord also provided a letter from their father's doctor dated October 15, 2022 which stated the following (names replaced with initials removed for privacy reasons):

“Mr. GSK has been my patinet (sic) since 2009. He suffers from Diabetes, chronic prostatitis, osteoarthritis, and kindey (sic) disease.

Since March 2021, he has been unable to do his daily activities, unable to walk without a walker and unable to climb the stairs at home. He requires to use wheelchair for any his outside activities”.

GK testified that their father had kidney disease since 2020, and did not anticipate the deterioration of their father’s health to such an extent that their father could no longer use the stairs.

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.

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the Contract of Purchase and Sale was assigned to a new Buyer, and the home was never occupied by GK or a close family member. By doing so, the landlord failed to comply with section 49(3) of the *Act*.

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

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations*

I find that the reasons provided by GK are not sufficient to support that there were extenuating circumstances that prevented the respondent and their family from using the home for the stated purpose.

As per GK's testimony in the hearing, their father suffered from kidney disease since 2020. Furthermore, GK's father's doctor stated that GK's father had been unable to walk without a walker, or climb stairs since March 2021. GK did not make the written request to the former landlord to end the tenancy pursuant to a 2 Month Notice until April 12, 2021, well after GK knew that their father had mobility issues, which included an inability to climb stairs.

Although GK's testimony was that they thought GK's father's condition would improve, I find that the evidence shows that GK and their family were well aware that GK's father suffered from chronic medical issues that could worsen over time. As noted above, by April 12, 2021, GK was well aware of the deterioration of their father's health, including the fact that their father would have difficulty residing in a home with stairs. Although I acknowledge the fact that the Contract of Purchase and Sale was originally entered into on February 26, 2021, before GK's father lost their ability to use the stairs, GK did not request that the tenant be served with a 2 Month Notice until April 12, 2021, well after GK knew their father could not use the stairs. I find that on April 12, 2021, GK could have reasonably anticipated that their father's health had deteriorated to the point that they would have difficulty residing in the home, and yet GK still proceeded to end the tenancy pursuant to the 2 Month Notice to End Tenancy for Landlord's Use. Although GK's testimony was that they had believed that their father's condition would improve, I do not find this belief to be supported in evidence.

I find that the evidence clearly shows that GK ought to have known on April 12, 2021, that their father would have difficulty residing in the home due to the stairs. I am not satisfied that the reason provided for assigning the Contract of Purchase and Sale on May 15, 2021 meet the definition of extenuating circumstances. I find that GK had still chosen to end the tenancy pursuant to the 2 Month Notice on April 12, 2021 despite the fact that GK's father would have trouble using the stairs, and therefore would struggle residing in the home. Although there may have been a possibility for GK's father's health to improve, I find that GK was well aware of the multiple medical issues that GK's father faced, and the associated deterioration of GK's father's health.

Although I am sympathetic towards GK and their family, and the difficulties that they have faced, I must consider the fact that the tenant, although on a month-to-month agreement, was entitled to remain in the tenancy despite the sale of the property, unless the tenancy was ended in accordance with the *Act*.

I do not find that the explanations provided by the GK fall under the definition of extenuating circumstance as set out in the *Act* and *Policy Guidelines*. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for GK's noncompliance. I issue a monetary award to the tenant in the amount of \$24,600.00.

Conclusion

I issue a \$24,600.00 Monetary Order in favour of the tenant in compensation for the GK's failure to comply with section 49(3) of the *Act*.

The respondent, GK, must be served with this Order as soon as possible. Should the respondent 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: November 24, 2022

Residential Tenancy Branch