



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 an Application for Dispute Resolution by the tenant(s) filed under the *Residential Tenancy Act* (the “Act”) for compensation because the landlord ended the tenancy and has not complied with the Act or use the rental unit for the stated purpose and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenant confirmed they received the landlords’ evidence. The landlords indicated they did not receive the evidence from the tenant, which are text messages; however, the landlords were prepared to proceed.

Issue(s) to be Decided

Are the tenants entitled to compensation pursuant to section 51(2) of the Act?

Background and Evidence

The tenancy began December 2017. Rent in the amount of \$1,900.00 was payable on the first of each month. Both parties provide a different end date. The tenant indicated it was July 31, 2021, and the landlord indicated it was August 15, 2021.

The tenants testified that they moved out of the rental unit on July 31, 2021, after receiving the Notice from the landlord with an effective date of August 31, 2021.

The tenants provided a copy of the Notice.

The reason for ending the tenancy within the Two Month Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). The child of the landlord or landlord's spouse.

The landlords testified that their child did move into the rental unit in the middle of August 2021 and remained there for almost three months. The landlords stated that because their parents sold their home in October 2021, they moved into the rental unit on October 29, 2021, and their plan was to stay in the rental unit for at least a year while they built their own home; however, their plans changed, and they purchased a home and moved into that home on or about January 14, 2022.

The landlords testified that after their parents moved out they decided to move on and listed the property for sale on or about January 20, 2022, which they had an accepted offer on January 25, 2022, and the completion date of the sale was February 10, 2022, although they allowed the buyers to move in early so they would not have to pay rent for February 2022.

The landlords submit that they informed the tenant on February 2, 2022, that they had sold the home, and the tenant seemed displeased that we did not sell the home to them.

The tenants testified that the landlords did not use it for the stated purpose, and they were doing renovations. The tenants stated that they had informed the landlord before that they would be interested in buying the home.

The landlords denied any renovation occurred, except required repairs.

Analysis

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 of the Act, and that they used the rental unit for its stated purpose for at least six months. The director may excuse the landlord from paying the tenant the amount require, if in the director's opinion, extenuating circumstances

prevented the landlord from doing so. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Section 51 (2) of the Act 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.**

Section 51 (3) states;

(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.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlords' use of property. The Guideline provides that a

landlord cannot end a tenancy to occupy a rental unit, in this case the landlords' child and then substitute another purpose.

With respect to extenuating circumstances, the Guideline provides the following: 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.

The Guideline provides 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 Guideline provides that 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.

Based on all of the above, the evidence and testimony from the Tenant and Landlords, and on a balance of probabilities, I find as follows

In this matter the effective date within the Notice was **August 31, 2021**, under the Act the landlord was required to use the premises for the stated purpose for **at least six months after the effective date**, which the earliest date the landlords' obligation would end under the Notice would be **March 1, 2022**.

In this matter, even if I accept the landlord's child was living in the rental unit for three months and that their parents moved in after this. However, the reason listed in the Notice was not for their mother or father to occupy the premises.

Further, even if I accept a close family member lived in the rental unit at separate times between August 15, 2022, and January 14, 2022, this still does not meet the requirements of the Act as this was not for at least six months. While I accept peoples

plans change; however, I find those are personal choices, and not an extenuating circumstance as outlined in the above examples. I find the landlords have breached the Act.

Further, the landlords sold the property on January 25, 2022, and the new owners took possession on or about January 31, 2022, before the completion date of February 10, 2022. The premises was sold before the landlords' obligation under the Notice was to end. I find this was a personal choice of the landlords and not an extenuating circumstance as outlined in the above examples. I find the landlords have breached the Act.

Therefore, I find that the landlords owes the tenants **\$22,800.00** which is the equivalent of 12 times the \$1,900.00 monthly rent payable under the tenancy agreement

Since the tenants were successful with their application. I order the landlords to repay the \$100.00 fee that the tenant paid to make application for dispute resolution. I grant the tenant a monetary order in the amount of **\$22,900.00**. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlords are cautioned that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenants' application for compensation pursuant to section 51 and 72 of the Act is granted.

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 18, 2022

Residential Tenancy Branch