



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Applicant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 51 for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- return of her filing fee pursuant to s. 72.

V.S. appeared as the Applicant. R.M. appeared as the Respondent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Is the Applicant entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?
- 2) Is the Applicant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Applicant confirmed the following details with respect to the tenancy:

- She moved into the rental unit on January 15, 2019.
- She moved out of the rental unit on October 31, 2021.
- Rent of \$1,150.00 was due on the first day of each month at the end of the tenancy.

The Applicant provided a copy of the tenancy agreement confirming these details. The Respondent confirmed that these details were accurate to his knowledge. The subject rental unit is a basement suite within a single detached home with a main floor unit.

The Respondent advised having purchased the property in the fall of 2021, taking possession of it from the previous owner on November 12, 2021. The Respondent advised that he requested vacant possession of the residential property from the seller with the intention of moving into the basement suite and renting out the main floor. The Respondent advised that he has recently retired and is on a fixed income such that he needs rental income to cover his expenses. Presumably, renting the main floor would generate a higher rental income.

The Applicant's evidence includes a Buyers Notice to Seller for Vacant Possession, indicating it was signed by the Respondent on October 12, 2021. The Respondent confirmed that he signed the form. The Applicant's evidence also includes a copy of a Two-Month Notice to End Tenancy signed on October 13, 2021 (the "Two-Month Notice"), which lists as its effective date December 31, 2021. The Applicant confirmed having received the Two-Month Notice. The Respondent testified that when he took possession of the residential property on November 12, 2021. The Applicant confirmed that she vacated before the effective date of the notice, having given the previous owner 10 days notice prior to moving out.

The Respondent testified that his intention was to do some renovations in the basement rental unit before moving in, explaining that he wanted to repaint the rental unit, replace the flooring, and make some cosmetic upgrades to the kitchen. The Respondent advises that he made inquiries with tradespeople on the lead time for completing the

work and was told it would take months. In the Respondent's telling, without the additional rental income from the Applicant until December 31, 2021, and due to the renovation lead time, he changed his plans and moved into the upper rental unit. The Respondent argues that he could not have undertaken the planned renovations given his finances. The Respondent acknowledges having advertised the basement suite for rental and he says that he secured a tenant for December 1, 2021. The Applicant's evidence includes copies of the advertisement.

The Applicant argued that the Respondent's own evidence indicates that he went on a vacation, referencing a letter from the Respondent's realtor in his evidence. The Respondent acknowledges having gone on vacation but says that it was to a low cost destination and emphasized that his finances were such that he needed rental income from one of the suites.

Analysis

The Applicant seeks compensation pursuant to s. 51(2) of the *Act* equivalent to 12 times the monthly rent payable under the tenancy agreement.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

The wording of s. 51(2) of the *Act* is clear that burden of proving the purpose stated within a notice to end tenancy issued under s. 49 rests with the landlord or the purchase as applicable under the circumstances. In the present circumstances, the Respondent confirmed signing a request for vacant possession of the rental unit, which specifically requested that the former owner and landlord serve a notice to end tenancy under s. 49 on the Applicant tenant. The Respondent, as the purchaser, bears the burden of proving the purpose states within the notice was accomplished, that this was done within a reasonable time after the effective date of the notice, and has been used for that purpose for at least 6 months.

The Respondent admits that he never moved into the rental unit and further admits that he rented the basement suite to someone else on December 1, 2021. I find that the Respondent has not only failed to demonstrate the purpose stated within the Two-Month Notice was fulfilled but has admitted that it was not fulfilled. Both parties made submissions on good faith and the Respondent's intention. This is irrelevant because it is a question of fact on whether the Respondent did, in fact, move into the rental unit. In this case, the Respondent admits he did not.

The Respondent argued that the Applicant moved out prior to him taking possession of the residential property. This point is also irrelevant. The Two-Month Notice was served at the Respondent's request. The Applicant moved out pursuant to the Two-Month Notice. Regardless of whether she gave proper notice or not, the die was cast when the Two-Month Notice was requested and served. The Respondent was bound to fulfil the purpose stated within the Two-Month Notice. He did not.

Pursuant to s. 51(3) of the *Act*, a landlord or purchaser may be excused of a compensation claim under s. 51(2) if there are extenuating circumstances which prevent the landlord from carrying out the stated purpose set out under the notice issued under s. 49. Policy Guideline #50 provides guidance with respect to compensation for ending a tenancy, specifically with respect to extenuating circumstances. By way of general guidance, Policy Guideline #50 states that "extenuating circumstances" are such that it would be unreasonable or unjust for a landlord or purchaser to pay compensation, typically because of matters that could not be anticipate or were outside a reasonable owner's control. It provides the following examples of what may be considered extenuating circumstances:

- 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.

Presently, the Respondent did not specifically argue s. 51(3) applied, though made submissions that his finances were such that he could not wait for the renovations and leave the basement suite empty. These are not extenuating circumstances. The guidance provided by Policy Guideline #50 sets a high bar with respect to what may constitute extenuating circumstances. There was nothing preventing the Respondent from moving into the basement and renting out the main floor as he had originally planned other than a desire to undertake some cosmetic upgrades in the basement suite beforehand. His explanation is insufficient. I accept that the Respondent did not

consider how his change of course would expose him to liability. However, the Respondent's ignorance of the *Act* is no excuse.

I find that the Applicant is entitled to compensation under s. 51(2) of the *Act* in the amount of \$13,800.00 (\$1,150.00 x 12).

The Applicant was successful in her application. I find that she is entitled to the return of her filing fee. Pursuant to s. 72(1) of the *Act*, I order the Respondent pay the Applicant's \$100.00 filing fee.

Conclusion

The Applicant is entitled to compensation pursuant to s. 51(2) of the *Act*. I order that the Respondent pay \$13,800.00.

The Applicant is further entitled to the return of her filing fee pursuant to s. 72(1) of the *Act*. I order that the Respondent pay the Applicant's \$100.00 filing fee.

It is the Applicant's responsibility to serve the monetary order on the Respondent. If the Respondent does not comply with the monetary order, it may be filed by the Applicant with 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 22, 2022

Residential Tenancy Branch