



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 March 11, 2022 (the “Application”). The Tenants applied as follows:

- For compensation because the Landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose
- For reimbursement for the filing fee

The Tenants and Landlord appeared 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 confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. 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 Landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought \$22,200.00 in compensation pursuant to section 51 of the *Residential Tenancy Act* (the “Act”) based on the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord’s Use of Property dated November 16, 2021 (the “Notice”).

A written tenancy agreement was submitted, and the parties agreed it is accurate. The parties agreed rent at the end of the tenancy was \$1,850.00 per month.

The parties agreed the Tenants moved out of the rental unit January 10, 2022.

The Notice was submitted. The effective date of the Notice was February 03, 2022. The grounds for the Notice were that the rental unit would be occupied by the Landlord and/or Landlord’s spouse and/or child of the Landlord or Landlord’s spouse.

The parties agreed the Notice was served on the Tenants November 16, 2021.

The Landlord provided written submissions which state in part the following. The Landlord purchased the rental unit in 2012 as an investment property. The Landlord had always considered selling the rental unit. On November 07, 2021, the Landlord told the Tenants the Landlord wanted to sell the rental unit the following year. On November 15, 2021, the Landlord unexpectedly received an offer to purchase the Landlord’s primary residence. The Landlord had previously tried to sell their primary residence. The Landlord accepted the offer which had a possession date of January 19, 2022. Given this, the Landlord expected to move into the rental unit for a period until they could find another home to purchase. The Landlord needed to sell their primary residence for many reasons, one of which was that the Landlord was financially stressed at the time.

The Landlord’s written submissions further state the following. On November 16, 2021, the Landlord served the Tenants with the Notice. The Landlord intended to reside in the rental unit until they could find new accommodation. On January 15, 2022, the Landlord’s son moved into the rental unit. The Landlord and the remainder of their family moved in shortly after. Between the Landlord selling their primary residence and March of 2022, the Landlord had been putting in multiple offers on multiple properties. The Landlord listed the rental unit for sale March 09, 2022. On March 17, 2022, the

Landlord sold the rental unit with a possession date of June 12, 2022. On June 10, 2022, the Landlord and their family moved out of the rental unit.

In summary, the Landlord's written submissions state that the unexpected sale of the Landlord's primary residence and the volatile housing market in the relevant city were extenuating circumstances and the Landlord "needed to make challenging decisions for" their family in a short period of time.

The Landlord acknowledged at the hearing that they did not follow through with the stated purpose of the Notice as required. The Landlord submitted that extenuating circumstances apply. The extenuating circumstances relied on by the Landlord include the Landlord buying a new house and the unpredictable market for house sales.

The Landlord testified as follows. The Landlord did not have a timeline for selling the rental unit when they listed it because they did not know if or when it would sell. After they sold their primary residence, the Landlord was house hunting, did not know if they would find a new house and had to move into the rental unit. When the Landlord found a new house, they had to list the rental unit for sale. It was part of the Landlord's plan to buy another house when they moved into the rental unit. The Landlord could not purchase their new house without selling the rental unit. The circumstances are extenuating because it was completely out of the Landlord's control if and when the rental unit would sell. The Landlord expected to live in the rental unit for a year; however, they were house hunting at the time. Even before their primary residence sold, the Landlord intended to sell the rental unit.

The Tenants testified as follows. The Tenants believe the Landlord evicted them for the purpose of renovating and selling the rental unit. The Landlord had previously told the Tenants the Landlord wanted to sell the rental unit. The Tenants told the Landlord they could sell the rental unit while the Tenants lived in it. The Landlord then presented the Tenants with a mutual agreement form to end the tenancy. The Tenants declined to agree to end the tenancy. The Landlord then served the Notice. The Tenants drove by the rental unit from time to time and it was being renovated. The Tenants spoke to the neighbours of the rental unit who told them nobody was living in it. The Landlord evicted the Tenants to sell the rental unit. The Tenants do agree that the Landlord and their family moved into the rental unit at some point for a short period of time.

Both parties submitted documentary evidence, which I have reviewed. I note that the Landlord sent the Tenants a text message in November of 2021 about wanting to

renovate the rental unit prior to selling it. The Landlord also sent a text message to the Tenants November 16, 2021, stating that they will be moving into the rental unit because their primary residence sold, and they have not “found anything yet”. I don’t find it necessary to detail the remaining documentary evidence because it is addressed by or supports the testimony outlined above, which is the basis for my decision.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord 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...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...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...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. (emphasis added)

(3) The director may excuse the landlord...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...for that stated purpose **for at least 6 months'** duration, beginning within a reasonable period after the effective date of the notice. (emphasis added)

RTB Policy Guideline 50 addresses section 51 of the *Act* as well as extenuating circumstances. The onus is on the Landlord to prove they followed through with the stated purpose of the Notice for at least six months. The onus is also on the Landlord to prove extenuating circumstances. Policy Guideline 50 states as follows in relation to extenuating circumstances:

G. EXTENUATING CIRCUMSTANCES

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 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.

There is no issue that the Landlord did not follow through with the stated purpose of the Notice for at least six months because the Landlord acknowledged this. I note that I agree the Landlord did not follow through with the stated purpose of the Notice for at least six months based on the Landlord's testimony and submissions. The effective date of the Notice was February 03, 2022. The Landlord testified that they moved out of the rental unit with their family June 10, 2022, just over four months later. I find section 51(2) of the *Act* applies unless the Landlord has proven extenuating circumstances.

The Landlord must prove that extenuating circumstances **prevented** them from using the rental unit for the stated purpose on the Notice for at least six months beginning within a reasonable period after the effective date of the Notice. Although the Landlord intermingled the circumstances that lead to them moving into the rental unit and the circumstances that lead to them moving out of the rental unit, I find it is the circumstances that lead to them moving out of the rental unit within six months of the effective date of the Notice that are relevant under section 51(3) of the *Act*.

The extenuating circumstances relied on by the Landlord are the volatile housing market in the relevant city and the Landlord needing to make challenging decisions for their family in a short period of time. At the hearing, the Landlord claimed the extenuating circumstances were the Landlord buying a new house and the unpredictable market for house sales. The Landlord claimed that not knowing if or when houses will sell is an extenuating circumstance. The Landlord also stated that they could not buy their new house without selling the rental unit.

The circumstances presented by the Landlord are not extenuating circumstances. A volatile or unpredictable housing market is not an extenuating circumstance. It is common knowledge that the housing market is unpredictable. It is obvious and well understood that nobody can predict the future and thus know if or when a house will sell. It is also obvious that while house hunting, one might find a house they wish to purchase. The Landlord having to sell the rental unit to buy their new house was due to the Landlord's financial situation which would have been known to the Landlord.

The Landlord chose to continue house hunting once they moved into the rental unit. It was an obvious and foreseeable possibility that the Landlord would find a house they wanted to purchase. When the Landlord chose to purchase their new house, they knew they would have to sell the rental unit and thus fail to comply with the Notice. The Landlord still chose to purchase their new house, move out of the rental unit and sell the rental unit. These were all choices the Landlord made and were completely within the Landlord's control. The Landlord could have chosen not to purchase their new house, move out of the rental unit and sell the rental unit, nothing prevented the Landlord from making this choice. Really, the Landlord had options and chose the option that failed to comply with the Notice. Nothing prevented the Landlord from living in the rental unit for six months. The Landlord may have chosen the best option for them at that point, but it was nonetheless a choice the Landlord made and completely within the Landlord's control. These are not extenuating circumstances.

The extenuating circumstances presented here are not at all similar to the extenuating circumstances contemplated by the *Act* and set out in RTB Policy Guideline 50 such as an unexpected death or act of nature. The circumstances presented here are akin to the Landlord changing their mind and making choices due to their financial situation which was known to them. The circumstances here were simply decisions of the Landlord, not events or circumstances that were unanticipated and outside the Landlord's control.

Given the above, I find the Landlord has failed to prove extenuating circumstances.

Based on the above, I find section 51(2) of the *Act* applies and section 51(3) of the *Act* does not apply. I find the Landlord must pay the Tenants \$22,200.00 (\$1,850.00 x 12).

Given the Tenants have been successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$22,300.00 and I issue the Tenants a Monetary Order in this amount.

Conclusion

The Application is granted. The Tenants are entitled to \$22,300.00 and I issue them a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 23, 2022

Residential Tenancy Branch