



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both tenants attended the hearing with the tenant MH (the "tenant") speaking on behalf of both tenants. The landlord KS attended the hearing with counsel for both landlords, DC. As both parties were present, service of documents was confirmed. Landlord's counsel acknowledged service of the tenants' Notice of Dispute Resolution Proceedings package and a second evidence package on behalf of both landlords. The landlords had no concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation of 12 months rent for the landlord's failure to use the rental unit for a stated purpose for at least six months from the effective date of the Two Month's Notice to End Tenancy for Landlord's Use?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision

The parties agree that the rental unit is an entire single-family house that was torn down and demolished within the 6-month period from when the tenants vacated the house in accordance with a notice to end tenancy for landlord's use.

The tenant gave the following testimony. The tenancy began on October 15, 2018, with rent set at \$2,500.00 per month payable of the first of each month. The landlord HC signed the tenancy agreement with the tenants, however he refused to provide a copy of it to the tenants despite their repeated requests to be given a copy. The landlord KS did not sign the tenancy agreement, to the tenant's recollection. The tenants believed KS was the brother of HC.

The landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use, a copy was provided as evidence. The effective date was November 1, 2021. The tenant testified that they had mostly vacated the rental unit before that date but that he had to go back and retrieve a few things in the shed some time after the 1st. Turning to the notice to end tenancy, the reason for ending the tenancy is incomplete. No reasons were provided. The tenant testified that the landlord verbally told him it was for the landlord's daughter's eventual use.

The tenant provided evidence corroborating the following facts: the landlord HC was issued a permit on January 17, 2022, to demolish the SFD and ALL buildings on site. Progress on the demolition was documented by the tenant showing the natural gas connection removed, asbestos abatement work being performed, and large machinery tearing down the old house on February 6, 2022. Framing for the new construction was up by March 27, 2022, and a new house was put on the market on September 28, 2022. A copy of the MLS listing was also provided as evidence.

The tenant acknowledges he did not pay rent for the month of October 2022 as he was entitled to forego one month's rent payment as noted on the notice to end tenancy.

The landlord's counsel gave the following submissions. The landlord's first submission was that the tenant did not pay the last month's rent. Second, the reason for ending the tenancy was because the niece of the landlord KS was going to occupy it while attending university. Third, the permits were hampered by the Covid pandemic, causing delays and changes to the landlord's plans for the rental house.

According to counsel, the plan was to have the landlord's niece live in the property once it was developed. Due to covid, the original plan to develop property was jeopardized and they had to cancel their original permit. The condition of the rental unit was uninhabitable and so the landlord got a permit to have it demolished. Counsel submits that the one-year term of the fixed lease had ended, and so the plan was to have the niece move in after the expiry of the fixed term tenancy with the tenants. The tenants were made aware from the beginning that development was always the plan for the property, according to the landlord's counsel.

Counsel acknowledged the landlord gave the wrong notice to end tenancy. The landlord made an error in serving a 2 Month Notice to End Tenancy for Landlord's Use rather than a 4 Month Notice to End Tenancy for Demolition or Conversion to Another Use because the landlord KS relied on the advice of her co-landlord, brother-in-law, HC. Earlier plan to develop the property got cancelled due to covid and KS's finances were affected. Market conditions changed and the landlord could no longer afford to make the payments. That is why it was put on the market instead of having the niece move in.

Analysis

Compensation for Ending a tenancy is discussed in Residential Tenancy Branch Policy Guideline PG-50. It states:

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- *accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- *used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

...

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated

purpose under sections 49(6)(c) to (f) for at least six months. 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.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

Turning to the notice to end tenancy. It is defective in that it does not state who the close family member of the landlord was going to occupy the rental unit. A close family member is defined in section 49 as:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

I accept the landlord's submission that the intended occupant of the rental property was going to be the landlord KS's niece. A niece does not meet the qualifications as a close family member. Even if the niece had occupied the rental unit after it was vacated, the tenants would have likely succeeded in their application for compensation since a close family member wouldn't have occupied it for a period of at least 6 months.

The niece never moved into the rental unit. Clearly, the rental unit was fully demolished within six months of the end of the tenancy. The landlords did not use the rental unit for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice. I note that the landlords were granted a permit to demolish the rental unit on January 17, 2022, less than three months after the unit was vacated by the tenants after the landlord served them with a 2 Month Notice to End Tenancy for Landlord's Use.

As stated in PG-50:

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit to a non-residential use instead.

If the landlords had intended on demolishing the rental unit as argued by landlord's counsel, the landlords were required to serve the tenants with a *Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit* pursuant to section 49(6) of

the Act. SK's ignorance of the Act does not excuse her from the consequences of non-compliance. Likewise, the co-landlord HC is equally responsible for serving the tenants with the wrong notice to end tenancy, as the rental unit was demolished rather than occupied by the landlord or her close family member.

Section 49(3) allows the director to excuse the landlord from paying the tenant the equivalent of 12 months rent if, in my opinion, extenuating circumstances prevented the landlord from accomplishing the stated purpose for ending the tenancy or using the rental unit for the stated purpose for at least 6 months duration. Landlord's counsel submits that the tenants were aware throughout their tenancy that the landlord intended on tearing down the rental house so they could move their niece into it. The fact that it was put on the market for sale rather than have the niece move in does not qualify as an extenuating circumstance for the landlord to be exempted from paying compensation. I have insufficient evidence to support this argument, as no documentary evidence was supplied for this hearing by the landlord. I cannot base my decision on vague references to the covid pandemic and poor market conditions made by landlord's counsel.

The landlords did not accomplish the stated purpose for ending the tenancy. The landlords did not use the rental unit for the stated purpose for at least six months within a reasonable period after the effective date of the notice. Consequently, the tenants are entitled to be compensated with the equivalent of 12 months' rent pursuant to section 51 of the Act. [$\$2,500.00 \times 12 = \$30,000.00$].

The tenants were successful in their application and the \$100.00 filing fee is to be recovered.

Conclusion

I issue a monetary order in the tenants' favour in the sum of \$30,100.00.

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 30, 2022

Residential Tenancy Branch