



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on December 5, 2022. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51

The Tenants were present at the hearing and provided affirmed testimony. The Landlords did not attend the hearing.

Preliminary Matters – Amendment of Application and Service

The Tenants stated that they moved out of the rental unit on October 31, 2021, after being served with a 2-Month Notice to End Tenancy for Landlord's Use (the Notice). The Tenants provided a copy of the Notice into evidence and it shows the purchasers (who requested vacant possession) as N.V. and D.V. The Tenants stated they also obtained a title search document, in March of 2022, which lists two other owners of the property, in addition to N.V. and D.V. The Tenants stated they served all 4 parties to be safe, with their Notice of Dispute Resolution Proceeding and evidence package on April 14, 2022, as they were all listed as owners on the title search document provided into evidence.

The Tenants provided mail tracking information into evidence corroborating that these packages were sent. I note that section 51(2) of the Act speaks to "the purchaser who asked the Landlord to give the Notice" as being responsible for potential compensation.

Since it was N.V. and D.V. who were listed on buyers portion of the Notice, I find they are the ones who ought to be liable for following through with the grounds selected on the Notice. I hereby amend the Tenants' application to remove A.H. and T.W. from the proceeding.

Further, I note N.V. and D.V. did not include an address for service on the Notice itself, and the Tenants had to do a title search to locate a current address for the Landlords. This title search clearly shows the Landlord's mailing address, as of March 3, 2022. I find it more likely than not that the Landlords N.V. and D.V.'s mailing address is as listed on the title search document. I find the Tenants sufficiently served the Landlords with their Notice of Dispute Resolution Proceeding and evidence.

The Tenants were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

The Tenants stated that monthly rent was \$950.00 per month. The Tenants stated they received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) in late August 2021, and moved out on or around October 31, 2021. The Tenants provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end 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.*

The Tenants stated that after they moved out, they continued to keep an eye on the property for the next few months, and they didn't see anyone move into the property. Then, the Tenants stated that they saw another person move into their rental unit and when they returned to the rental unit, on March 11, 2022, they took a photo of some

mail in the mailbox with this other individual's name. The Tenants stated they have tried contacting this person further, but they have not had any success.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

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).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

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). 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.

As noted above, the onus is on the Landlords to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance. The Landlord selected the following ground:

- *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.*

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

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.*

In this case, I note the onus is on the Landlord (purchasers) to prove that they accomplished the stated purpose on the Notice, which is that they would be moving into the rental unit themselves for at least 6 months. In this case, the Tenants moved out on

October 31, 2021, and if the Landlords were to satisfy this part of the Act, they would have to live in there for at least 6 months, until at least the end of April 2022. Further, the onus is on the Landlord's to demonstrate they fulfilled the obligations under the part of the Act. Since they failed to attend the hearing, I find the Landlords have failed to sufficiently demonstrate that they moved in for a period of at least 6 months, following the effective date of the Notice.

As a result, I find the Landlord breached section 51 of the Act, which typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlords have sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

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*

The Landlords were not present to speak to any extenuating circumstances. I am not satisfied that there were any "extenuating circumstance", such that it would be unreasonable or unjust for the Landlords to pay the compensation.

I award the Tenant \$11,400.00, pursuant to section 51(2) of the Act, which is 12 times rent of \$950.00. Further, I award the recovery of the filing fee (\$100.00) as the Tenants were successful.

Conclusion

I grant the Tenants a monetary order in the amount of \$11,500.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: December 6, 2022

Residential Tenancy Branch