



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 as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for a monetary order in the amount of \$32,400, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement (12 month compensation pursuant to section 51(2) of the Act) and to recover the cost of the filing fee.

The tenants and the landlord attended the teleconference hearing, all participants were affirmed, the hearing process was explained, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me. While the father/witness of the landlord, JFN (witness) attended the hearing, they were not called to testify during the hearing.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they received the documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. As such I find there are no service issues before me.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2019 and converted to a month-to-month tenancy after April 30, 2020. Monthly rent was \$2,700 per month and was due on the first day of each month.

There is no dispute that the tenants accepted the 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 7, 2022 (2 Month Notice). The reason stated on the 2 Month Notice reads as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="checked" type="checkbox"/>	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).
Please indicate which close family member will occupy the unit.	
<input type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input checked="checked" type="radio"/>	The father or mother of the landlord or landlord's spouse

The landlord testified that their parents, JFN and AL (Parents) were originally living with the landlord; however, needed to find their own place due to the mother-in-law of the landlord coming to live with the landlord. The landlord testified that his Parents moved into the rental unit as of April 1, 2022 and did not need the full home so rented the upper portion for \$2,700 per month starting April 1, 2022.

The landlord attempted to argue that the tenants were aware that the space was too large for the landlord's parents before they moved in but that the tenants required the entire home and couldn't do without renting the entire home, which is what prompted the 2 Month Notice.

Both parties were advised that the reason provided by the landlord did not meet the definition of extenuating circumstances under the Act, which I will address further below.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

12 times the monthly rent - Section 51(2) of the Act applies and states:

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.**

[emphasis added]

In addition to the above, section 51(3) of the Act 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.**

[emphasis added]

RTB Policy Guideline 50 – Compensation for Ending a Tenancy states the following regarding extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. 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.

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.

[emphasis added]

Firstly, I find that the landlord admitted that his parents re-rented the upper portion of the rental unit for \$2,700 as of April, 1 2022, which I find does not comply with the reason stated on the 2 Month Notice.

Secondly, I find RTB Policy Guideline 50 takes a reasonable approach and based on the evidence before me, whether or not the tenants were aware that the entire house was too large for the parents of the landlord, re-renting for \$2,700 the day they moved into the rental unit does not meet the definition of extenuating circumstances that prevented the landlord from complying with the stated purpose within a reasonable period after the effective date of the 2 Month Notice and using the rental unit for that stated purpose for at least 6 months' duration.

Rather, I find the landlord made the decision to have his parents occupy the lower portion of the home knowing that the upper portion would be re-rented immediately. As such, I find the landlord has provided insufficient evidence of extenuating circumstances under the Act. In addition, I find the landlord's parents were not able to re-rent the rental unit for a minimum of 6 months from April 1, 2022, when they moved into the rental home but did so anyways. Therefore, I find the tenants are entitled to **\$32,400** in compensation from the landlord, comprised of twelve times the monthly rent of \$2,700 pursuant to section 51(2) of the Act.

As the tenants' application was fully successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100** pursuant to section 72 of the Act.

I find the tenants have established a total monetary claim of **\$32,500** comprised of \$32,400, which is 12 times the \$2,700 monthly rent, plus the \$100 filing fee.

Conclusion

The tenants' application is fully successful.

I find the landlord failed to use the rental unit for the stated purpose and instead, re-rented the upper portion, or permitted the upper portion of the home to be re-rented for \$2,700 to new tenants as of April 1, 2022, while the parents of the landlord were only occupying the lower portion of the rental home.

The tenants are granted a monetary order pursuant to section 67 of the Act, in the amount of \$32,500 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenants only for service on the landlord.

Should the landlord fail to pay the monetary order once served upon them, they could be held liable for all costs related to enforcement of the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 30, 2023

Residential Tenancy Branch