



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 and both landlords attended the hearing. The landlords acknowledged service of the tenants' Notice of Dispute Resolution Proceedings package and the tenants acknowledged service of the landlord's evidence package. Neither party took issue 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

Are the tenants entitled to compensation from the landlords for not using the rental unit for the stated purpose?

Can the tenants recover the filing fee?

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 a basement suite located in the landlord's single-family home.

The tenant JK gave the following testimony. The tenancy began on October 1, 2015 with rent originally set at \$800.00, going up to \$850.00 when the co-tenant CB moved in sometime in 2017.

On August 22, 2021, the landlords served them with a 2 Month Notice to End Tenancy for Landlord's Use with an effective date of October 31, 2021. After they moved out, the tenant saw an ad in facebook for their rental unit for rent. The tenant investigated and discovered the house had been sold in mid-November 2021. The tenants provided screenshots of the listing and links to the realtor's video of the rental unit.

The landlord YF gave the following testimony. This all happened during the height of Covid and the co-landlord RF was confined to living in a trailer on the property because he is an essential worker. Their daughter has a heart condition and must be kept quarantined and away from her father who is likely to be exposed due to his work. To keep his family safe, he was living in the trailer but the trailer is old and leaky and they wanted him to live in the basement unit being rented to the tenants.

After the tenants vacated the basement rental unit, the landlords discovered on October 14, 2021 that the zoning for their land had changed from single family to multi-family. This would mean increased traffic and a potential walk/bike path through the neighbourhood. The landlord testified that the city did not provide them with any notification of the intended change in land usage and it was only by fluke that the landlords discovered it after reading some old local newspapers. The landlords discovered the bylaw was passed in the fall of 2020 but they had no knowledge of it. Their realtor got confirmation from the city that it was in effect as of November 8 or 9 of 2021.

Knowing this, they contacted their mortgage broker and a realtor to see about other houses to live in. A suitable single family house was immediately found and their offer to purchase it was accepted. The landlords put their house on the market and it quickly sold. They never expected their home to sell that quickly.

The landlords testified that they remained living in the house and occupied the former rental unit in the basement until they moved out in January 2021.

Analysis

The Residential Tenancy Branch has produced a policy guideline, PG-50 [compensation for Ending a Tenancy] to provide landlords and tenants information regarding the requirement for a landlord to pay compensation to a tenant when the landlord does not fulfill a legal obligation after ending a tenancy for landlord's use.

According to the guideline:

Sections 51 and 51.4 of the RTA require a landlord to pay further compensation to a tenant if the landlord does not prove that they have accomplished the purpose for which the tenancy was ended within a reasonable period or, in some instances, did not use the rental unit for the stated purpose for at least 6 months duration. The director may only excuse a landlord from having to pay this further compensation if there were extenuating circumstances.

...

Accomplishing the Purpose/Using the Rental Unit

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

In the matter before me, the landlords acknowledge they did not use the rental unit for a period of at least 6 months, since they testified that they stayed in the rental unit until the end of January, 2021. As the tenancy with their tenants ended on October 31st, this would mean they only occupied it for 3 months.

I am satisfied, based on the tenant's evidence, that the house was marketed and sold within a very short time after the tenancy ended. According to one of the screenshots provided, the property sold on November 15, 2021. I accept that as the sold date

although it is relatively unimportant to the issue of whether there were extenuating circumstances that prevented the landlord from using the rental unit for the stated purpose of occupying it.

The onus is on the landlord to establish extenuating circumstances. Turning again to PG-50:

G. EXTENUATING CIRCUMSTANCES

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.

The landlords submit that the change in the zoning for their property caused them to start looking for a house that was zoned single-family. It was good fortune that they were able to find one that would be safe for their family and suit their needs so quickly. This was the reason they sold the house within weeks of ending the tenancy with their tenants.

I accept that the landlords' daughter has heart issues and is immunocompromised. I also accept that the co-landlord RF is an essential worker and needs to keep distant from his daughter. I further accept that the reason for ending the tenancy was so that RF could relocate from the trailer into the basement. The issue here, is that the landlords failed to occupy the basement unit for a period of at least 6 months from the date the tenancy with their tenants ended. While it is possible the landlords may not have been aware of section 51 of the *Residential Tenancy Act*, it does not provide them with a reason to be exempt from it.

When they discovered the city had rezoned their property, the landlords could have waited for the six months to pass before putting it on the market, but they did not. The landlords were not prevented from looking for a new home during this time, or even making an offer with a closing date after April 30, 2022, (six months after the date the tenancy ended with their tenants) as long as they remained occupying the rental unit for the entire 6 months. Consequently, I find that the rezoning of the property does not qualify as an extenuating circumstance that would excuse the landlords from being subject to section 51. In this case, the landlords immediately sold the house with the rental unit, triggering the provision of section 51 which obligates them to compensate the tenants with the equivalent of 12 months rent [$\$850.00 \times 12 = \$10,200.00$]. I grant the tenants a monetary order in that amount.

As the tenants' application was successful, the tenants are entitled to recover the \$100.00 filing fee.

Conclusion

I award the tenants a monetary order in the amount of \$10,300.00.

This decision is legal, final and binding and 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 12, 2023

Residential Tenancy Branch