



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 the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenants seek:

- compensation from the Landlords related to a Notice to End Tenancy for Landlord's Use of Property dated December 10, 2021 (the "2 Month Notice") pursuant to sections 51(2); and
- authorization to recover the filing fee of the Application from the Landlords pursuant to section 72.

The two Tenants ("SO" and "KO") and the two Landlords ("AS" and "MA") appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

SO stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence ("NDRP Package") by registered mail on each of the Landlords on April 25, 2022 at the rental address. SO provided the Canada Post tracking numbers for service of the NDRP Package on each of the Landlords at that address. SO submitted into evidence a copy of a State of Title search dated April 21, 2022 that disclosed an address for the Landlords at a different address. SO stated the Tenants also served the NDRP Package on the Landlords on May 11, 2022 at the address indicated on the State of Title. SO provided the Canada Post tracking numbers for service of the NDRP Package at the address for the Landlords stated on the State of Title Search. AS acknowledged the Landlords received the NDRP Package. I find the NDRP Package was served by the Tenants on each of the Landlords in accordance with the provisions of sections 88 and 89 of the Act.

SA stated the Landlords did not serve any evidence on the Tenants.

Issues to be Decided

Are the Tenants entitled to:

- compensation from the Landlords in relation to the 2 Month Notice?
- recover the filing fee of the Application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

SO submitted into evidence part of the tenancy agreement, dated February 5, 2022, between the original landlord ("Former Landlord") and the Tenants. The parties agreed the tenancy commenced on February 5, 2020, on a month-to-month basis, with rent of \$2,000.00 per month. The Tenants were to pay a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 by February 7, 2022. SO stated the Former Landlord returned the security and pet damage deposits.

The parties agreed the Landlords requested the Former Landlord to serve the 2 Month Notice on the Tenants and the Tenants vacated the rental unit on January 1, 2022. The 2 Month Notice stated the reason for ending the tenancy was:

All 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 2 Month Notice provided the names and address of the purchasers. AS admitted the Landlords were the purchasers named in the 2 Month Notice.

AS stated the house was about 110 years old. AS stated the Landlords thought they would move into the rental unit and had a home inspection performed before they purchased the rental unit. AS stated that, after the purchase the rental unit, the Landlords had a private consultant inspect the rental unit and were told the house posed health issues. AS stated his wife has MS and the Landlords decided not to move into the rental unit and they moved into different residential accommodations. AS stated that, after

having the private consultant inspect the rental unit, the Landlords decided not to move into it as they did not have enough money to pay for the renovations. AS stated the rental unit has been demolished. AS stated the Landlords did not re-rent the rental unit.

SO stated the Tenants received a text message from the Former Landlord on September 2 and September 4, 2022 to advise them the rental unit had been sold. SO stated the Tenants received a request from an agent so the Landlords could come into the rental unit. SO stated the Landlords told them they were going to move into the rental unit. SO stated the Tenants told the Landlords there were rules regarding the requirement for a purchaser to move into the rental unit within a reasonable period of time after the tenancy ended and that they must occupy the rental unit for a minimum of six months. SO stated that notwithstanding this, the Landlords insisted the Tenants vacate the rental unit. SO stated the Tenants moved to accommodations located approximately four blocks away from the rental unit. SO stated he was told in April 2022 by a person on a hazmat team working on the residential property that the rental unit was being demolished.

Analysis

The Tenants seek \$24,000.00 in compensation pursuant to section 51(2) of the Act based that the Landlords failed to use the rental unit for the stated purpose in the 2 Month Notice. The 2 Month Notice was issued pursuant to section 49(5) of the Act which states:

- (5) A landlord may end a tenancy in respect of a rental unit if
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Subsections 51(2) and 51(3) of the Act state:

- 51(2) Subject to subsection (3), the landlord...must pay the tenant...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, except in respect of the purpose specified in section 49(6) (a), 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.
- (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...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 in italics added]

Pursuant to rule 6.6 of the Rules, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the standard of proof. In these circumstances, subsection 51(2) of the Act requires the Landlords establish the rental unit has been used by the Landlords for at least 6 months' duration, beginning within a reasonable period after the effective date of the 2 Month Notice. The effective date of the 2 Month Notice was March 1, 2022. The parties agreed the Tenants moved out of the rental unit on January 1, 2022. AS admitted the Landlords never moved into the rental unit.

The 2 Month Notice stated the Landlords (as purchasers at the time of service) intended in good faith to occupy the rental unit. Section 51(3)(b) states the Landlords must pay the Tenants compensation that is equivalent to 12 months rent if the Landlords do not use the rental unit for the purpose stated in the 2 Month Notice.

AS stated the house was about 110 years old. AS stated the Landlords had a home inspection performed before they purchased the rental unit and thought they would move into the rental unit. AS stated that, after the Landlords purchased the rental unit, they had a private consultant inspect the rental unit and were told the house posed health issues. AS stated his wife has MS and the Landlords decided not to move into the rental unit and moved into different residential accommodations. AS stated that, after having the private consultant inspect the home, the Landlords decided not to move into it as they did not have enough money to pay for the renovations.

Residential Tenancy Policy Guideline 50 ("PG 50") addresses the requirements for a landlord to pay compensation to a tenant under the Act when a landlord or purchaser, as applicable, has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given. Part E of PG 50 addresses when a landlord may be excused from paying compensation in extenuating circumstances and it states:

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 in italics added]

Pursuant to section 51(2) of the Act, the Landlords have the onus of proving, on a balance of probabilities, that the Landlords used the rental unit for the purpose stated in the 2 Month Notice. AS admitted the Landlords did not move into the rental unit and that it has been demolished. Pursuant to section 51(3) of the Act, the Landlords now have the burden of proving, on a balance of probabilities, that they are excused from paying the amount required under section 51(2) of the Act, on the basis there were extenuating circumstances that prevented the Landlords from moving into the rent within a reasonable period of time after the effective date of the 2 Month Notice and occupying it for a minimum period of 6 months.

AS argued the Landlords should be excused from paying compensation to the Tenants pursuant to section 51(2) of the Act because the rental unit posed a health risk to the Landlords and they did not have enough money to perform renovations on the rental unit. The Landlords did not submit any evidence, such as a hazardous materials inspection report or medical report, to support their claim that the rental unit posed health issues to one or both the Landlords or that the costs of remediation of any issues related to the rental unit would be prohibitive.

The Tenants resided in the rental unit for 23 months before they vacated it. The Landlords knew the house was 110 years old at the time they purchased it. The Landlords knew, or ought to have known that a house that was 110 years old would likely contain hazardous materials or molds that could impact on the health of its occupants. As such, the Landlords had the option of purchasing the rental unit and then have a comprehensive inspection performed on the rental unit. After receiving a comprehensive report, the Landlords could have then decided whether to serve the

Tenants with a 2 Month Notice to End Tenancy for Landlord's Property if they intended to move into the rental unit or, alternatively, they could have served the Tenants with a Four Month Notice to End Tenancy for Demolition if they decided that it was too costly to renovate the rental unit. As such, I find that it was within the control of the Landlords to decide whether they would occupy the rental unit or to demolish the home and then serve the Tenants with the appropriate notice to end tenancy. Instead, the Landlords assumed the risk of requesting that the Former Landlord serve the Tenants with the 2 Month Notice before they performed an adequate inspection on the rental unit. As such, I find the Landlords have not, in my opinion, satisfied the burden of proving, on a balance of probabilities, that there were extenuating circumstances that excuse the Landlords from paying the Tenants the amount required under section 51(2) of the Act. Based on the above, I order the Landlords to pay the Tenants compensation equivalent to 12 times the monthly rent of \$2,000.00, being \$24,000.00.

As the Tenants have been successful in the Application, I order the Landlords to pay the Tenants \$100.00 to reimburse them the filing fee for the Application pursuant to section 72 of the Act.

Conclusion

The Tenants are granted a Monetary Order for \$24,100.00 calculated as follows:

Item	Amount
Compensation equal to 12 Months' Rent (12 x \$2,000.00)	\$24,000.00
Reimbursement of Filing Fee for Application	\$100.00
TOTAL	\$24, 100.00

The Tenants are provided with this Order on the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: January 3, 2023

Residential Tenancy Branch