



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the Tenants' application under the Residential Tenancy Act (the "Act") for:

- compensation due to the Landlords having ended the tenancy and not complied with the Act or used the rental unit for the stated purpose pursuant to section 51; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

One of the Tenants, PG, the Landlord, the Landlord's son JH, and the Landlord's daughter-in-law WC attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. During the hearing WC and JH spoke on the Landlord's behalf as the Landlord's agents. JH also acted as the Landlord's interpreter.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

WC and JH confirmed that the Landlord had received the Tenants' notice of dispute resolution proceeding package and evidence. I find the Landlord was served with such documents in accordance with sections 88 and 89 of the Act.

PG testified that the Tenants received the Landlord's evidence via email on December 9, 2022. I note that email is not an acceptable method of service under the Act and the

regulations unless it had been specifically provided as an address for service by a party. I further note the evidence was sent one day late as Rule 3.15 of the Rules of Procedure requires that the respondent's evidence must be received by the applicant "not less than seven days before the hearing". However, I understand from PG that she has seen the evidence beforehand and do not need to adjourn this hearing to have more time to respond to this evidence. As such, I find the Tenants to be sufficiently served with the Landlord's evidence pursuant to section 71(2)(c) of the Act.

Issues to be Decided

1. Are the Tenants entitled to compensation under section 51(2) of the Act?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

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

This tenancy commenced on October 1, 2017 and ended on August 3, 2021. At the time that the tenancy ended, rent was \$2,130.00 per month.

The Tenants submitted a copy of a two month notice to end tenancy for landlord's use of property dated June 30, 2021 (the "Two Month Notice") into evidence. This notice is signed by the Landlord and states that the rental unit will be occupied by the "child of the landlord or landlord's spouse". It has an effective date of August 31, 2021. The parties agreed that the Tenants did not receive a copy of the Two Month Notice until July 18, 2021.

The rental unit was part of a duplex property. The Landlord resided in the other half of the duplex until it was sold in June 2022. According to WC, the Landlord owned the rental unit but the unit in which she had resided was owned by the Landlord's former spouse.

WC testified that the rental unit was renovated after the Tenants left. WC and JH indicated that the Landlord was upset at them due to the condition the Tenants had left

the rental unit in. JH stated that they tried to explain to the Landlord that it was wear and tear.

WC testified that her arguments with the Landlord continued throughout the renovations about various other matters. WC described personal issues that she was dealing with at the time, including health-related problems for both herself and the Landlord. WC described the difficulty of dealing with unwanted opinions from the Landlord.

JH testified that his younger sibling had also been struggling with various personal issues. JH stated that he and WC had originally wanted to move into the rental unit so JH could spend more time with that sibling.

JH and WC confirmed that ultimately, they did not move into the rental unit because WC's relationship with the Landlord had deteriorated.

WC stated they knew the Landlord was not allowed to rent out the rental unit for six months, so it was not rented out. WC stated that the Landlord was unable to fund the mortgage on the rental unit with the Landlord's retirement savings, so the rental unit was sold at a loss.

WC acknowledged that she and JH owned their own place, which they did not know if they would sell or rent out if they moved into the rental unit.

WC stated that the plan for the duplex had been for JH and his sibling to each live in one unit, but the plan fell flat.

In response, PG stated that the Landlord has not submitted evidence to show that JH had intended to move in or did move into the rental unit. PG stated it did not appear that the Landlord was acting in good faith.

PG testified that after the Tenants had moved out on August 3, 2021, they heard from their friends that there was an open house at the rental unit. PG referred to evidence submitted by the Tenants, including a listing for the rental unit printed on September 12, 2021 and a BC Assessment printout which shows that the rental unit was sold on September 27, 2021.

PG testified that after the Tenants had already moved out, they received a mutual agreement to end tenancy from the Landlord. PG stated that the Tenants did not sign this document.

PG stated that back in 2017 when the Tenants were moving into the rental unit and JH and WC were moving out, the Tenants had already heard about JH and WC's issues with JH's parents, and that it wasn't a happy arrangement.

PG argued that the Two Month Notice was not made in good faith, and that the Landlord's intention was to sell the rental unit, which was sold very quickly.

In reply, WC stated that they wanted to have the mutual agreement to end tenancy signed for a "complete file". JH confirmed that because they couldn't agree on moving in, the Landlord listed the rental unit for sale in September 2022.

Analysis

1. Are the Tenants entitled to compensation under section 51(2) of the Act?

Section 49(3) of the Act permits a landlord who is an individual to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(1) defines a "landlord" as an individual who, at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years and holds not less than 1/2 of the full reversionary interest.

Section 49(1) further defines an individual's "close family member" to include the individual's parent, spouse, or child, or the parent or child of that individual's spouse.

I have reviewed a copy of the Two Month Notice and find that it is a valid notice to end tenancy in form and content pursuant to section 52 of the Act. I find the parties' tenancy was ended on August 3, 2021 based on the Two Month Notice and in accordance with section 49(3) of the Act.

In this application, the Tenants seek compensation of 12 months' rent from the Landlord under section 51(2) of the Act, which states:

Tenant's compensation: section 49 notice

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(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 the landlord or purchaser, as applicable, 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.

Policy Guideline 50. Compensation for Ending a Tenancy ("Policy Guideline 50") states:

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.

Based on the evidence before me, I find the stated purpose of the Two Month Notice was for the Landlord's child, JH, to move into the rental unit. I find it is admitted that JH did not move into the rental unit at any time after the Two Month Notice was issued. I further find it is undisputed that the Landlord sold the rental unit on September 27, 2021. Therefore, I find the Landlord did not accomplish the stated purpose of the Two Month Notice within a reasonable time after the effective date of the Two Month Notice or at all.

Where a landlord has not met the requirements of section 51(2), section 51(3) allows the landlord to be excused from paying compensation to the tenant if there were "extenuating circumstances" that "prevented" the landlord from accomplishing the stated purpose of the notice, as follows:

- (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.

Policy Guideline 50 further states as follows:

G. EXTENUATING CIRCUMSTANCES

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

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.

In this case, I find the explanation advanced on behalf of the Landlord as to why JH never moved into the rental unit was essentially because JH's wife, WC, could not get along with the Landlord who lived in the adjacent unit. However, I am not satisfied that this situation constitutes "extenuating" circumstances or circumstances which could not have been anticipated by the Landlord. I note the examples of extenuating circumstances provided in Policy Guideline 50 above include death of the person moving in and the destruction of the rental unit in a wildfire. Furthermore, I am not satisfied that WC's strained relationship with the Landlord can be said to have "prevented" JH from moving into the rental unit. Similarly, I do not find that the various personal, health, and family problems described by WC and JH would have physically prevented JH from moving into the rental unit and living there for at least 6 months. I find there is little evidence to suggest that the Landlord or JH made any serious effort to have JH move into the rental unit at all. I find that at best, the Landlord very quickly changed her mind about having JH move into the rental unit and sold the rental unit instead. Accordingly, I conclude that there are no extenuating circumstances to excuse the Landlord from paying compensation to the Tenants under section 51(2) of the Act.

I further conclude that pursuant to section 51(2) of the Act, the Tenants are entitled to compensation of 12 months' rent from the Landlord, in the amount of \$2,130.00 × 12 months = \$25,560.00.

2. Are the Tenants entitled to recovery of the filing fee?

The Tenants have been successful in this application. I grant the Tenants' claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenants is calculated as follows:

Item	Amount
Section 51(2) Compensation (\$2,130.00 × 12 months)	\$25,560.00
Filing Fee	\$100.00
Total Monetary Order for Tenants	\$25,660.00

Conclusion

Pursuant to sections 51(2) and 72(1) of the Act, I grant the Tenants a Monetary Order in the amount of **\$25,660.00**. This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court, and 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: January 10, 2023

Residential Tenancy Branch