



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 February 16, 2023. 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 Landlord (agent of) and the Tenants both attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other's evidence, and no issues were raised with respect to service of the documents.

All parties 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 Tenants entitled to compensation for money owed or damage or loss under section 51 of the *Act*?

Background and Evidence

Both parties agree that monthly rent was \$5,000.00 per month. The Tenants stated they received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) at the end of April 2022, and the effective date of that Notice was supposed to be June 30, 2022. The Tenants disputed the Notice and the final hearing for that matter was held on October 14, 2022. The Landlord was successful and received an Order of Possession. The Tenants moved out on November 4, 2022.

The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- 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).
 - The father or mother of the Landlord or Landlord's spouse

The Tenants feel misled by the Landlord, and they feel he has not acted in good faith in ending the tenancy. The Tenants spoke to several reasons as to why they do not feel the Landlord (and his agents/representatives) have acted in good faith. The Tenants pointed to their previous hearing, on October 14, 2022, and questioned why the Landlord's agents still pushed for an Order of Possession pursuant to the Notice, if the Landlord's mother had passed away a week before the October 14, 2022, hearing.

The Tenants pointed out that they have been surveilling the residence since they moved out, and have also obtained water usage and utility information on the property, which shows no usage. The Tenants point out that this shows that no one has lived in the property since they moved out. The Tenants provided a detailed log and testimony to explain their observations about the lack of use of the property after they moved out.

The Tenants stated that the Landlord never made them aware that his mother passed away until they served the documentation for this proceeding.

The Landlord's agent stated that the intention was always to have the Landlord's mother move into the property, as indicated on the Notice. The Landlord's agent stated that the Tenants were supposed to move out at the end of June 2022, which was the effective date of the Notice, but since they disputed the Notice, their move-out was delayed until November 4, 2022. The Landlord's agent stated that the Landlord's mother passed away on October 7, 2022, as per the death certificate provided into evidence.

The Landlord's agent asserts that this is clearly an extenuating circumstance, which made it impossible for the Landlord to follow through with the grounds on the Notice.

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:

- 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).
 - The father or mother of the Landlord or Landlord's spouse

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.

I note the Landlord's agent acknowledged that the Landlord's mother did not move in. As such, I am satisfied the Landlords breached section 51(2) of the Act.

This typically entitles the Tenants to compensation. However, the issue now becomes whether or not the Landlord has 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*

I have considered the Landlord's agent's explanation regarding why the Landlord's mother never moved in. I note the Tenants feel the Landlord has not acted in good faith, for a variety of reasons. However, I note that good faith is an issue that must be addressed when determining the Landlord's intentions under section 49 of the Act and whether or not the Landlord is entitled to an Order of Possession pursuant to the Notice.

In order to receive an Order of Possession, pursuant to section 49 of the Act, the Landlord must establish their good faith intentions. Once the Landlord establishes their good faith intentions, which was done at the time of the previous dispute resolution for the Order of Possession, and the tenancy ends, the issue becomes whether or not the Landlord followed through with the grounds on the Notice, and whether or not the Tenants are entitled to compensation due to the Landlord not following through. At this point, if the Landlord didn't follow through with the grounds on the Notice, it must also

be considered whether or not there were extenuating circumstances that prevented the Landlord from following through with the reason behind the Notice.

I have reviewed the relevant testimony and evidence, and I am satisfied that the Landlord had extenuating circumstances that prevented him from following through with the Notice. He issued the Notice so that his mother could move in. His mother died after the Notice was issued, and before the Tenants moved out.

I find this situation is extenuating such that it would have substantially contributed to the Landlord's inability to accomplish the stated purpose. This event is corroborated with a death certificate. Overall, I find the Landlord has sufficiently demonstrated that the circumstances are sufficiently extenuating. Pursuant to section 51(3), I excuse the Landlord from having to pay 12 months compensation for breaching section 51(2).

I dismiss the Tenants' application, in full, without leave.

Conclusion

I dismiss the Tenants' application in full, without leave.

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: February 17, 2023

Residential Tenancy Branch