



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNECT FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

DA appeared for the tenants in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenants' application. Both parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on July 1, 2020, and ended on June 30, 2021 after the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use on April 26, 2021. Monthly rent was set at \$1,950.00 payable on the first of the month. A security deposit of \$975.00, and pet damage deposit of \$400.00 were held for this tenancy.

The tenants filed this application for compensation on May 13, 2022 after they discovered that the landlord had sold the home instead of occupying it.

The landlord does not dispute that the home was listed for sale and sold. The landlord provided the following testimony, with accompanying affidavits. The landlord testified that they had served the tenants with the 2 Month Notice on April 20, 2021 with the intention of occupying the home with their future spouse after their wedding in September 2021. The effective date of the 2 Month Notice was June 30, 2021, by which the date the tenants had vacated the home.

The landlord testified that they had served the tenants with the 2 Month Notice in good faith, and had intended to move into the home. The landlord disputes the tenants' application for monetary compensation citing extenuating reasons that prevented the landlord from fulfilling their obligations under the *Act*.

The landlord testified that the home had flooding issues in the basement, and was therefore not habitable. The landlord hired a company to address the flooding issues, but the landlord was informed by the excavating company that the repairs were not guaranteed to work. The landlord submitted a copy of the invoice dated July 7, 2021 from the excavation company totalling \$13,335.00 for installation of a partial perimeter drain.

The landlord testified that on July 5, 2021, they were approached by business partners to buy another residence. An offer was made for this property on July 6, 2021, and subjects were removed on July 21, 2021. The landlord listed the rental property on July 28, 2021, and an offer was accepted on August 28, 2021. The sale was completed on October 4, 2021 with the new owner taking possession on October 6, 2021.

The landlord testified that they had felt bad about the change in circumstances, and texted the tenants on July 29, 2021, as supported by the text message submitted in evidence. The landlord informed the tenants that they had listed the home, and that this was not the original plan.

The tenant cross examined the landlord during the hearing, and asked them if they were aware of the flooding issue before the 2 Month Notice was served. The landlord responded that they were, but was hoping that that they could manage and repair the issue. The landlord testified that the excavating company could not guarantee that the flooding issue was resolved, which left the landlord feeling uneasy. The landlord testified that they did not have any other intentions until approached by their business partners on July 5, 2021 with a solution. As noted in the affidavit of the landlord's spouse, their current property was not listed for sale until June 9, 2021 by the previous owners. The landlord submitted an affidavit from the co-owner, CB, that they had made a proposal on July 5, 2021 that the landlord sell the rental property, and purchase the current one.

Analysis

Section 51(2) of the Act reads in part as follows:

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.*

Policy Guideline #50 states the following about “Extenuating Circumstances” in the context of compensation for ending a tenancy under section 49 of the Act.

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.

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlord had sold the home instead of occupying it. In consideration

of Policy Guideline #50 and the definition of “extenuating circumstances”, I find that the reason provided by the landlord fails to meet the criteria for “extenuating circumstances”.

Although I am sympathetic towards the fact that the landlord was unable to obtain a guarantee that the home would not flood despite the work completed, and although I believe that the landlord did serve the tenants with the 2 Month Notice in good faith, I am not satisfied that the reason provided for selling the home meets the definition of extenuating circumstance.

Although the landlord did submit proof in the form of an invoice that they had in fact paid an excavating company to fix the flooding problem, I am not satisfied that the landlord had provided sufficient evidence to support that the home was not habitable. Although I recognize the landlord’s concerns and uneasiness about keeping a home that could flood, the evidence does not sufficiently support how the circumstances prevented the landlord from fulfilling their obligations to occupy the home for at least six months. In this case, I find that the landlord was approached with “a really good opportunity and didn’t want [to] pass it up”. I find that this amounts to the landlord changing their mind, rather than an “extenuating circumstance”, and therefore I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the landlord’s noncompliance.

As the tenants were successful in their claim, I allow them to recover the filing fee.

Conclusion

I issue a \$23,500.00 Monetary Order in favour of the tenants for compensation under section 51(2) of the *Act*, and for recovery of the filing fee.

The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be 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: February 27, 2023