



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC FFT

Introduction

This dispute involves an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$42,100 for 12 times the monthly rent under section 51(2) of the Act and for the filing fee.

The applicants, the purchaser, counsel for the purchaser (counsel) and a translator for the purchaser (translator) attended the teleconference hearing. The parties were affirmed, with the exception of counsel who is an officer of the court.

The parties were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. The parties confirmed the receipt of all evidence. Therefore, I find the parties were sufficiently served under the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

Although after 56 minutes the arbitrator advised the parties that this matter would be adjourned to allow time for the applicants to present witnesses regarding whether a tenancy agreement was formed, the arbitrator instead is deciding this matter on the merits of the second argument submitted by counsel.

During the hearing, counsel presented two arguments:

1. The applicants were never identified as tenants and until the application the purchaser were not aware of who these applicant were.

2. Even if there was a tenancy with the applicants, which counsel and the purchaser argue there is not, the landlord has extenuating circumstances under the Act that would result in no compensation under the Act being awarded.

For brevity, I find I can address this matter by dealing with 2 above first.

Issue to be Decided

- Has the purchaser proven extenuating circumstances under the Act that would result in this claim being dismissed?

Background and Evidence

While there were submissions made that the applicants creatively created a tenancy agreement, I make no findings in this decision regarding whether the applicants did so. Instead, I will be detailing the submissions of the extenuating circumstances argument presented by counsel on behalf of the purchaser.

Counsel submits that the purchaser purchased the property in good faith and confirmed that they did request that a 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 15, 2022 (2 Month Notice) be issued against the original tenants, not the applicants listed in this application.

The 2 Month Notice listed 2 reasons as follows:

| Reason for this Two Month's Notice to End Tenancy (check the box that applies) | |
|--|--|
| <input checked="" type="checkbox"/> | 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). Please indicate which close family member will occupy the unit. <div><input checked="" type="radio"/> The landlord or the landlord's spouse <input type="radio"/> The child of the landlord or landlord's spouse <input type="radio"/> The father or mother of the landlord or landlord's spouse</div> |
| <input type="checkbox"/> | The landlord 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. |
| <input checked="" type="checkbox"/> | All of 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. |
| <input type="checkbox"/> | The tenant no longer qualifies for the subsidized rental unit. |

Counsel submits that it was always the intention for the purchaser to have their mother, JD (Mother) occupy the rental unit. The purchaser explained that their Mother had applied for their Permanent Residency Card (Residency Card) on October 3, 2020 but

had been delayed due to repeated extensions. The purchaser stated in January 2022, they were advised that the wait time for the Residency Card was only 4 more months, so they relied on that date. Later in March of 2023, the purchaser indicated that they were advised that the delay would be a total of 39 months from the October 2020 application date. 39 months after October 2020 would be January 2024. The purchaser confirmed that the Residency Card has not been denied, only continually extended.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Firstly, section 51(2) of the Act applies and states:

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.**

[emphasis added]

Given the above, I will now address extenuating circumstances under the Act. Section 51(3) of the Act states:

(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.

[emphasis added]

In the matter before me, I have carefully considered the evidence presented regarding the continued extensions for the Mother of the purchaser's Residence Card. RTB Policy Guideline 50 – *Compensation for Ending a Tenancy* (Guideline 50) under F applies and states:

F. 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.

After careful consideration of the evidence provided directly from the purchaser regarding their Mother, I find that the extensions caused by applying for their Residence Card were both outside of the Mother's control and would not be expected to result in a 39 month delay from October 2020. Therefore, I find the landlord has met the burden of proof to support that on the civil standard, the balance of probabilities, the landlord had Extenuating Circumstances under section 51(3) of the Act. I therefore excuse the landlord from paying the amount required under subsection (2) of section 51 of the Act.

Consequently, the application is dismissed in its entirety.

I do not grant the filing fee as a result.

Conclusion

The application fails and is dismissed without leave to reapply.

The landlord has proven Extenuating Circumstances pursuant to section 51(3) of the Act and has been excused from paying the amount required under subsection (2) of section 51 of the Act.

I make no finding on whether the applicants are tenants under the Act.

The filing fee is not granted.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 31, 2023

Residential Tenancy Branch