



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC FFT

Introduction

This dispute relates to the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for the following:

1. Monetary order of \$24,600 for 12 times the monthly rent under section 51(2) of the Act,
2. Filing fee of \$100.

The parties attended the teleconference hearing, all participants were affirmed, the hearing process was explained, and the parties were given an opportunity to ask questions. The parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral, documentary and/or digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they received the documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. There are no service issues as a result.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on April 15, 2016. Monthly rent was \$2,050 per month and was due on the first day of each month. The parties confirmed that rent had never been increased during the tenancy.

There is no dispute that the tenants accepted the 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 26, 2021 (2 Month Notice). The reason stated on the 2 Month Notice reads as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

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.

The landlord or the landlord's spouse

The child of the landlord or landlord's spouse

The father or mother of the landlord or landlord's spouse

The effective vacancy date listed on the 2 Month Notice was January 31, 2022.

The landlord testified that it was their plan to have their daughter occupy the home as their daughter was getting married. The landlord stated that they later found out that the in-laws would be assisting in purchasing a home as a wedding gift and that the daughter may not be moving in as planned. The landlord stated that they had a conversation with the tenants on December 22, 2021 when they found out and stated that they would love for the tenants to stay and felt terrible about the change in circumstances. The landlord

stated that the rent would be kept the same amount also. The conversation was followed up with an email from the landlord dated December 23, 2021, submitted in evidence.

In addition, the landlord stated that they felt bad so were willing to compensate the tenants voluntarily and gave them a cheque for \$2,500 as a “courtesy payment”. The landlord testified that the property remains vacant due to the change in circumstances.

The tenants responded by stating that by the time the landlord advised them of the change in circumstances, that they had already found a new place to move to after being served the 2 Month Notice and were committed to the new place, so could not change their plans. The tenants vacated the rental unit earlier than January 31, 2022 on January 15, 2022.

While there was some discussion of a settlement agreement, the parties were unable to reach a settlement agreement during the hearing.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

12 times the monthly rent - 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]

In addition to the above, 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]

RTB Policy Guideline 50 – Compensation for Ending a Tenancy states the following regarding extenuating circumstances:

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 added]

Firstly, I find there is no dispute that the rental unit was not used for the stated purpose, which was for the landlord's daughter to occupy it. The rental unit remains vacant.

Secondly, I find RTB Policy Guideline 50 takes a reasonable approach in terms of defining extenuating circumstances under the Act. After careful consideration, I find that reasonable due diligence was not exercised and that the landlord could have and should have confirmed prior to issuing the 2 Month Notice, whether their daughter would be assisted by the in-laws with purchasing a property before evicting their long-term tenants. I find that such a gift from in-laws is common and could be both anticipated and would have been in their control had they exercised reasonable due diligence.

Given the above, I find the landlord has failed to meet the definition of extenuating circumstances that prevented the landlord from complying with the stated purpose within a reasonable period after the effective date of the 2 Month Notice and using the rental unit for that stated purpose for at least 6 months' duration. Therefore, I find the tenants are entitled to **\$24,600** in compensation from the landlord, comprised of 12 times the monthly rent of \$2,050 pursuant to section 51(2) of the Act.

As the tenants' application was fully successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100** pursuant to section 72 of the Act.

I find the tenants have established a total monetary claim of **\$24,700** comprised of \$24,600 in compensation plus the plus the \$100 filing fee.

Regarding the courtesy payment of \$2,500, I do not deduct that amount from the claim as it was a voluntary courtesy payment from the landlord and does not reduce the compensation owed under the Act.

Conclusion

The tenants' application is fully successful.

I find the landlord failed to use the rental unit for the stated purpose and have failed to provide sufficient evidence that they had an extenuating circumstance under the Act for failing to do so.

The tenants are granted a monetary order pursuant to section 67 of the Act, in the amount of \$24,700 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenants only for service on the landlord.

Should the landlord fail to pay the monetary order once served upon them, they could be held liable for all costs related to enforcement of the monetary order.

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: April 5, 2023

Residential Tenancy Branch