



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      MNDCT, MNETC, FFT

### **Introduction**

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

- a monetary order for \$10,800 representing 12 times the amount of monthly rent, pursuant to sections 51(2) and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenants confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) a monetary order of \$10,800;
- 2) recover the filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is one half of a duplex. The tenants and the prior owner of the rental unit entered into a tenancy agreement starting November 1, 2012. Monthly rent was \$900 and was payable on the first of each month. The tenants paid the prior owner a security deposit of \$400 and a pet damage deposit of \$50, which he has returned to the tenants.

On March 15, 2022, the prior owner served the tenants with a Two Month Notice to End Tenancy (the Notice). It specified a move out date of May 31. It listed the reason for ending the tenancy as "all 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." The prior owner attached a copy of the Buyers Notice to Seller for Vacant Possession signed by the landlord.

The tenants did not dispute the Notice and moved out on May 31, 2022.

The tenants stated that in June 2022 they saw advertisements on Facebook, which they submitted into evidence, listing the rental unit for rent at \$1,950 per month. They arranged for a friend of theirs to reply to the advertisement, and the landlord confirmed that the rental unit was available for rent.

The landlord testified that he and his wife initially planned to move into the rental unit and use the other side of the duplex for his mother. On May 29, his wife learned that she was pregnant. He stated that her prior pregnancy had been very difficult and negatively affected her mental health. The pregnancy was not a surprise, however, as the landlord testified they had been trying for over a year to conceive.

On May 7 or 9, the landlord's wife resigned from her job as a registered nurse due to the impending move to the rental unit. The commute from the rental unit to her job would be too far for her. He testified that they planned to get settled in the rental unit and then his wife would "ramp back up to full-time work" by picking up shifts at the local hospital.

The landlord testified that when they purchased the duplex, they thought that they would be able to afford this arrangement. However, at some point prior to taking possession of the duplex, they came to the conclusion that they could not afford to move into the rental unit for financial reasons and due to the landlord's wife's mental health.

The landlord agreed that as a result, they re-rented the rental unit as alleged by the tenants.

The tenants did not dispute any of these facts. Rather they argued that being forced to move out of the rental unit caused their rent to increase dramatically caused them to incur moving expenses and loss of income.

## **Analysis**

The facts of this application are not in dispute.

Section 51(2) of the Act sets out when a tenant is entitled to an amount equal to 12 times the monthly rent. It states the purchaser who asked the landlord to give the notice must pay the tenant an amount that is the equivalent of 12 times the monthly rent if the purchaser does not prove that they used the rental unit for the purpose for ending the tenancy within a reasonable period after the effective date of the Notice, and they used the rental unit for that purpose for at least six months' duration.

Based on the testimony of the parties at the hearing, I find that the landlord has not satisfied both of these requirements.

However, section 51(3) provides an exemption to section 51(2) if "extenuating circumstances" prevented the purchaser from using the rental unit for the purpose stated on the Notice. Residential Tenancy Branch (the RTB) Policy Guideline 50 states that "extenuating circumstances" 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.

The two reasons offered by the landlord as why they could not use the rental unit for the stated purpose were that they were no longer able to afford the cost of living in the rental unit and that the landlord's wife's mental health prevented them from making the move to a new city. I do not find that either of these reasons incapable of being anticipated or were beyond the landlord's control.

The landlord's wife's mental health issue to be related to her pregnancy. However, the landlord and his wife could have anticipated the pregnancy and its effects on his wife's mental health, given that they were trying to conceive for over a year and that her prior pregnancy caused her mental health problems. At the time the landlord asked the prior owner to issue the Notice, the landlord and his wife should have been aware of the possibility of the mental health issues posed by a potential pregnancy.

Additionally, I do not find that the landlord's financial circumstances could not have been reasonably anticipated at the time the Notice was issued. I gather that the financial issues were caused by the landlord's wife quitting her job. This quitting was not the result of anything unexpected but was rather part of their plan to move into the rental unit. At the time the Notice was issued, the landlord and his wife could have reasonably

anticipated that moving to a new municipality would create a much longer commute for her.

I do not find it would be unjust for the landlord to pay compensation. The circumstances that led to his family not moving into the rental unit were easily anticipated. The failure to anticipate these circumstances caused them to needlessly terminate the tenancy, which caused significant disruption to the tenants' lives.

Accordingly, I decline to find that extenuating circumstances exist.

I order the landlord to pay the tenant \$10,800, representing 12 times the tenant's monthly rent.

Pursuant to section 72(1) of the Act, as the tenants have been successful in the application, they may recover the filing fee.

### **Conclusion**

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the landlord pay the tenants \$10,900, representing 12 times the amount of the tenant's monthly rent plus the \$100 filing fee.

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: April 25, 2023

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Residential Tenancy Branch