



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      MNETC, FFT

### **Introduction**

On April 14, 2022, the prior owner of the rental unit served the tenant with a two month notice to end tenancy (the Notice) at the respondent landlords' request. The tenant moved out of the rental unit in accordance with the Notice on June 29, 2022.

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

- a monetary order for \$11,760 representing 12 times the amount of monthly rent, on the basis that the landlords did not use the rental unit for the purpose stated on the Notice;
- a monetary order of \$19.50 for the cost of serving the landlords by registered mail; and
- authorization to recover the filing fee for this application from the landlords.

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

### **Preliminary Issue – Correction of Landlord LF's Surname**

The tenant misspelled the LF's surname on the application by including a "o" in it. By consent of the parties, I amend the application to correct the spelling of the LF's surname.

### **Issues to be Decided**

Did the landlords use the rental unit for the purpose stated on the Notice?

If not, did extenuating circumstances exist which prevented them from doing so?

Is the tenant entitled to recover service costs?

Is the tenant entitled to recover the filing fee?

### **Evidence and Analysis**

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 a converted garage attached to a single-detached home. The tenant and the prior owner of the rental unit entered into a tenancy agreement starting September 1, 2020. Monthly rent was \$980. The tenant paid the prior owner a security deposit of \$490, which was returned to the tenant.

On March 31, 2022, the landlords entered into a contract of purchase and sale to purchase the residential property from the prior owner. The completion date was June 30, 2022. On April 11, the landlords gave the prior owner a "Buyers Notice To Seller For Vacant Possession" indicating that they required vacant possession of the rental unit and that intended in good faith to occupy it. The prior owner served the tenant with the Notice on this basis. The tenant did not dispute the Notice.

#### **1. Did the landlords use the rental unit for the purpose stated on the Notice**

The landlords moved into the main portion of the residential property after purchasing it but did not move into the rental unit. Initially, they allowed a friend to stay there on a temporary basis, and then, in August 2022, they rented it to a student for \$1,350 per month.

The landlords argued that they acted in good faith when they asked the prior owner to issue the Notice. They testified that, at that time, they believed they would be incorporating the rental unit into their main living space. I will not elaborate more on this point, as whether the Notice was issued in good faith is not relevant to the tenants' application.

Section 51(2) of the Act states that the tenant is entitled to 12 times the amount of the monthly rent if the rental unit is not used for the purpose stated on the notice within a

reasonable period of time after the effective date or for a period of at least six months. The landlords' intention when issuing the Notice is not relevant to this analysis.

Based on the landlords' testimony, I find that they did not use the rental unit for the stated purpose.

2. Did extenuating circumstances exist to prevent the landlords from using the rental unit for the stated purpose?

Section 51(3) of the Act does provide an exemption to the penalty, if the landlords can prove that the rental unit was not used for the stated purpose due to extenuating circumstances.

Residential Tenancy Branch (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.

Policy Guideline 50 provides examples of extenuating circumstances which include the death of an intended occupant and the destruction of the rental unit. It includes examples of circumstances that would not be extenuating as a landlord changing their mind or failing to adequately budget for a renovation, when the tenancy so the landlord could renovate.

The landlords argued that three extenuating circumstances existed which prevented them from using the rental unit for the stated purpose. For the reasons that follow, I do not find that the circumstances the landlords encountered were "extenuating".

a. Increased Interest Rates

The landlords stated that two weeks after they signed the contract of purchase and sale, the interest rate on their mortgage increased by 0.5%. On June 2, the interest rate increased a further 0.5%, and on July 14, it increased a further 1%.

The landlords testified that they had a variable rate mortgage and their monthly mortgage payments went up by \$878 per month from the time they purchased the residential property to the July 14, where it remained until September 2022. They

testified that interest rates continued to climb by a further 2% and that currently their mortgage payments are \$1,868 per month higher than they were in March 2022.

They stated that they did not select a fixed-rate mortgage because they did not qualify for a mortgage of the amount they needed to purchase the residential property.

They stated that they can no longer afford the entire amount of their monthly mortgage payment without the additional income the rental unit generates.

The landlords argued that this level of interest rate increase does not have a historical precedent and could not have been anticipated by them. LF testified that she was a mortgage broker and that she had “an inkling” rates would go up but did not expect them to go up the extent they did.

LF is in a better position than most to be aware of the risks associated with variable rate mortgages. Variable rates are lower than fixed rates because the borrower assumes the risk that the prime interest rate may increase, which would cause their monthly payments to increase. In exchange for this, they receive a lower rate than they would if the lender assumed this risk (which is what occurs in fixed-rate mortgages).

In this case, at the time the landlords decided to rent out the rental unit (August 1, 2022) their interest rate had increased 2%. Once the rental unit was re-rented, the further increase in interest rates is not relevant to determining if extenuating circumstances existed.

I do not find that an increase of 2% in the landlords' mortgage's interest rate is an extenuating circumstance. An increase of this amount could have reasonably been anticipated, in particular by an individual with LF's expertise in the field. The risks of variable rate mortgages are well known, and the landlord failed to account for such an increase in rates when budgeting to purchase the residential property. I find that this failure is akin to the failure to properly budget for a renovation when ending a tenancy for the purposes of conducting a renovation.

The landlords pushed their finances to the limit when purchasing the residential property, as can be seen by their inability to get approved for a fixed rate mortgage. They assumed a not insignificant amount of risk when doing so. The increase in interest rates was a risk that they agreed to assume and when the interest rates rose, they ought to have been prepared to deal with the consequences.

b. LF's Loss of Income

Landlord LF is a mortgage broker and works on a commission basis. She testified that as a result of the increased interest rates, fewer people used her services to secure mortgages. As a result, her annual income fell by 50%.

The landlords based their decision to buy the residential property on the assumption that LF's income would remain steady. They argued that this decrease in income was that expected and beyond their control.

For similar reasons as above, I do not find that LF's abrupt decline in income is an extenuating circumstance. In light of the rising interest rates and the nature of LF's income stream, the landlords ought to have budgeted to account for a decrease in LF's income and taken into account the increase in the interest rate would have on her income.

c. Unexpected Medical Bill

The landlords testified that one month prior to moving into the rental unit their pet dog suddenly lost the use of his back legs. They testified that they had to pay for an emergency MRI and hospitalization, which cost over \$5,600, as well as a number of other smaller expenses for their pet's rehabilitation. In total, they testified they incurred \$10,000 in expenses related to their pet's health issues.

I accept that the landlord's dog's medical emergency was not something that the landlords could have reasonably anticipated. However, I do not accept that some form of urgent matter requiring a monetary payment of a similar amount could not have been reasonably anticipated.

It is well-accepted that having an "emergency fund" is a reasonable financial precaution to take to insulate oneself against unexpected financial emergencies. If the purchase of the residential property caused the landlord to exhaust their emergency fund, I find that it would have been reasonable for them to have continued the tenancy so as to replenish it.

The lack of such an emergency fund amounts to failure to properly budget for the cost of purchasing the residential property. As such, I do not find that the costs incurred for the landlord's dog's medical expenses amount to an extenuating circumstance.

As the landlords have failed to prove that extenuating circumstances existed, I find that they must pay the tenant an amount equal to 12 times his monthly rent: \$11,760.

3. Is the tenant entitled to recover service costs and the filing fee?

There is nothing in the Act which permits an applicant to recover expenses incurred when making an application. As such, I dismiss the tenant's application to recover the cost of serving the landlords.

However, section 72 allows a successful applicant to recover the filing fee from the opposing party. As the tenant has been successful in the application, he may recover the filing fee from the landlords.

**Conclusion**

The tenant has been successful in his application. Pursuant to sections 62 and 72 of the Act, I order that the landlords pay the \$11,860, representing the repayment of the filing fee plus an amount equal to 12 months' rent.

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: May 11, 2023

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Residential Tenancy Branch