



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenants July 15, 2022 (the “Application”). The Tenants applied:

- For compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy, and the Landlord has not complied with the Act or used the rental unit for the stated purpose
- To recover the filing fee

This matter first came before me for a hearing April 06, 2023. The Tenant appeared at the original hearing. Nobody appeared at the original hearing for the Landlord. The Tenants were successful in the original hearing and were awarded \$15,700.00 as compensation for the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy and for the filing fee. The original Decision was issued April 06, 2023.

The Landlord sought review of the original Decision based on being unable to attend the original hearing. Based on the Landlord’s review application, I granted the Landlord a review hearing in a Decision issued May 17, 2023.

The review hearing occurred May 30, 2023. The Landlord appeared at the review hearing with Legal Counsel. The Landlord called their spouse, A.B., as a witness at the review hearing. The Tenant appeared at the review hearing.

Preliminary Matter – Tenants

The Application names the Tenant, M.C. and J.C. as tenants. The Landlord disputed that J.C. was ever a tenant. I heard the parties on this issue at the review hearing.

The Landlord provided a written tenancy agreement between them, the Tenant and M.C. The written tenancy agreement does not name J.C. The Tenant said the written tenancy agreement was only done for banking purposes and A.B. did not name J.C.

I am not satisfied J.C. was a tenant of the rental unit, versus an occupant, because J.C. is not named on the written tenancy agreement signed by the parties in October 2020. The written tenancy agreement is a legal document. If the parties agreed J.C. was a tenant, I would expect J.C. to be named on the written tenancy agreement. Given J.C. is not named, and the Landlord says J.C. was not a tenant, I am not satisfied J.C. was a tenant and have removed J.C. from the Application.

Preliminary Matter – Service

I addressed service of all materials and there were no service issues at first.

However, during the hearing, Legal Counsel said the Landlord only served the five-page RTB Application for Review Consideration form on the Tenant and not the 36 pages of written argument and evidence submitted with the form. Instead, the Landlord had submitted a whole new written argument and set of evidence for the review hearing and had served this on the Tenant.

The Landlord did not follow the instructions in the review Decision issued May 17, 2023, which states that the “landlord’s review application will be considered as the landlord’s position” at the review hearing. The review Decision also directed the Landlord to serve “a copy of their review application” on the Tenant. The Landlord’s review application includes the 36 pages of written argument and evidence, the only document that sets out the Landlord’s basis for review. The five-page RTB Application for Review Consideration form includes no basis for review and simply refers to the 36 pages of written argument and evidence.

Given the Tenant was not served with the 36 pages of written argument and evidence, and Legal Counsel and the Landlord did not rely on this at the review hearing, I have not considered it further. I have considered the new written argument and set of

evidence submitted by the Landlord May 28 and 29, 2023, for the review hearing because this was served on the Tenant who was able to respond to it at the review hearing.

Preliminary Matter – Adjournment

In the new written argument, Legal Counsel set out a request for an adjournment of the review hearing. I had not read the new written argument before the hearing because the Landlord was supposed to rely on their review application and not supposed to submit new written argument and evidence. I did not know the Landlord was asking for an adjournment until after the review hearing. I had told Legal Counsel during the hearing that I had reviewed the materials the Landlord was supposed to rely on being the 36 pages of written argument and evidence. Neither the Landlord nor Legal Counsel raised the issue of an adjournment at any point during the hearing and therefore I did not hear the parties on this or consider this.

Review Hearing

Section 79(2) of the *Residential Tenancy Act* (the “*Act*”) allows an RTB decision to be reviewed if a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control. RTB Policy Guideline 24 explains the grounds for review, including being unable to attend the original hearing.

The Landlord sought review based on being unable to attend the original hearing and provided documentary evidence showing they were out of the country at the relevant time and never received the hearing package for this matter.

The Tenant did not dispute that the Landlord was unable to attend the original hearing given the evidence provided.

I am satisfied based on the Landlord's documentary evidence that they were out of the country when the hearing package was served, never received the hearing package and did not know about the hearing. I grant the Landlord a new hearing on the Application under section 79(2)(a) of the *Act*.

Issues on New Hearing

1. Are the Tenants entitled to compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy, and the Landlord has not complied with the Act or used the rental unit for the stated purpose?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the Landlord issued the Tenants a Two Month Notice to End Tenancy with the grounds that the Landlord or Landlord's spouse and the father or mother of the Landlord or Landlord's spouse would occupy the rental unit (the "Notice").

The parties agreed the Notice was served on the Tenants in January 2022, the Landlord told the Tenants to move out of the rental unit by March 2022, and the Tenants moved out April 01, 2022.

There was no dispute that the rental unit was the upper suite of a house and there were tenants living in the lower suite of the house who were also evicted by the Landlord.

The Landlord acknowledged they did not follow through with the stated purpose of the Notice.

The Landlord relied on extenuating circumstances as the reason they did not follow through with the stated purpose of the Notice.

Legal Counsel, the Landlord and A.B. provided the following testimony and submissions about extenuating circumstances.

The Notice was issued so the Landlord, A.B. and A.B.'s mother could move into the rental unit and house. At the time, the Landlord and A.B. lived in another house that they own, which they still live in. A.B.'s mother lived in a separate house. The plan was for the Landlord and A.B. to rent out their house and move into the rental unit house.

The documentary evidence provided to prove the Landlord and A.B. intended to move into the rental unit house is the renovation invoice which shows the house was renovated for the Landlord and A.B. The invoice also shows a bathtub was installed in

the lower part of the house for A.B.'s mother, and a shower was installed in the upper part of the house for the Landlord and A.B.

The plan was to renovate the rental unit house and then move into it. The Landlord thinks renovations took until May. Legal Counsel thinks renovations took until June or July. The Landlord did not move into the rental unit house between April 01, 2022, when the Tenants moved out, and July 21, 2022, when they left the country, because they were waiting for the renovations to be done.

The plan to move into the rental unit house changed because A.B. was diagnosed with a medical condition which resulted in A.B. being tired and experiencing other negative symptoms. A.B. could not move houses because they were tired and experiencing other negative symptoms. A.B. could no longer take care of their mother or help their mother pack. A.B. had to go to another country for medical treatment. The Landlord and A.B. were out of the country from July 21, 2022, until September 07, 2022. The medical evidence provided does not outline a connection between A.B.'s medical diagnosis and not being able to move houses or live in the rental unit house.

The Landlord also received medical treatment while out of the country. The Landlord was experiencing medical issues at the time they were supposed to move into the rental unit house. There is no documentary evidence provided showing the Landlord was experiencing medical issues prior to July 21, 2022.

The cost of the trip to another country and medical treatment for the Landlord and A.B. caused the Landlord financial hardship which also prevented the Landlord from moving into the rental unit house. The Landlord had to re-rent the rental unit house and did so July 12, 2022. Rent for the Tenants and lower suite tenants totalled \$2,290.00 per month when the Notice was issued. The Landlord re-rented the house for \$7,000.00 per month.

In relation to the issue of financial hardship, I asked why the Landlord could not have moved into the rental unit house and rented out their other house as planned. Legal Counsel said the Landlord's belongings were in their house and the rental unit house was empty so it was easier to rent out the rental unit house. Legal Counsel said A.B. could not do any of the moving because of their medical diagnosis. Legal Counsel said the Landlord was also experiencing medical issues at the time.

When asked again to explain the connection between financial hardship and not being able to move into the rental unit house, Legal Counsel and A.B. said A.B. was too tired to move from their house to the rental unit house.

The Tenant disputed that the Landlord, A.B. and A.B.'s mother ever intended to move into the rental unit. The Tenant did not dispute that the rental unit was renovated and that A.B. was diagnosed with a medical condition as stated. The Tenant submitted that, if there was an intention to move into the rental unit, the Landlord could have hired movers when A.B. was diagnosed with a medical condition. The Tenant said they believe the Landlord evicted them for financial gain.

Analysis

The Notice was issued under section 49(3) of the *Act*.

Section 51 of the *Act* sets out compensation due to tenants when served with a notice under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...must pay the tenant...an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord...does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit...has been 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...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...for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

RTB Policy Guideline 50 addresses section 51 of the *Act*. The Landlord must prove they followed through with the stated purpose of the Notice as required. The Landlord must also prove extenuating circumstances.

The Landlord's documentary evidence addresses the following points:

- The rental unit was renovated
- A.B. was diagnosed with a medical condition
- A.B. had to leave work due to their medical condition
- A.B. had to seek medical treatment outside of the country
- A.B. and the Landlord received medical treatment outside of the country
- The trip and medical treatment outside of the country cost a lot of money

I accept the above points.

However, at the end of the day, what occurred here is that the Landlord evicted the Tenants and lower suite tenants, renovated the rental unit house until May, June or July and re-rented the house July 12, 2022, for \$4,710.00 more in rent per month. This situation is exactly what the legislation is trying to prevent. When this is what occurred, the Landlord must provide convincing evidence showing they intended to move into the rental unit and that extenuating circumstances prevented them from doing so.

The renovation invoice does not show the Landlord intended to move into the rental unit. It simply shows the rental unit was renovated.

The only evidence provided to prove the Landlord intended to move into the rental unit is the testimony of the Landlord and A.B. Their testimony is not supported by any documentary evidence or independent objective witness. Their testimony alone is not enough to prove the Landlord intended to move into the rental unit when the Tenant disputes this and the undisputed facts are that the Landlord evicted the Tenants, renovated the rental unit and re-rented the house for a higher rent amount. Without further evidence, the Landlord has failed to prove they ever intended to move into the rental unit. Given this, what occurred with the Landlord, A.B. and A.B.'s mother from January 2022 to July 12, 2022, is irrelevant.

Even if the Landlord had proven they intended to move into the rental unit when the Notice was issued, the Landlord has failed to prove extenuating circumstances prevented them from doing so.

In relation to renovations, the Landlord was not allowed to issue the Notice and then renovate the rental unit without moving into it within a reasonable period after the effective date of the Notice. Renovating the rental unit without living in it is not following through with the stated purpose of the Notice.

The Landlord has failed to prove A.B.'s medical diagnosis was an extenuating circumstance because they failed to prove a link between the medical diagnosis and not being able to move into or live in the rental unit house. I accept all the evidence about A.B.'s medical diagnosis and treatment. I accept A.B. was tired and experienced symptoms that prevented them from moving belongings and furniture from their house and their mother's house to the rental unit house. But I find it highly unlikely that the plan was to have A.B. alone move belongings and furniture from their house and their mother's house to the rental unit house because this defies common sense. Therefore, I am not satisfied A.B.'s medical diagnosis and resulting symptoms prevented the Landlord from moving into the rental unit house. Further, the Landlord has not drawn any link between A.B.'s medical diagnosis and A.B. not being able to live in the rental unit house. I do not accept that the Landlord was also experiencing medical issues that impacted their ability to move houses because there is no documentary evidence before me showing this was the case before July 21, 2022.

The Landlord has also failed to prove financial hardship was an extenuating circumstance that prevented them from moving into the rental unit. I accept the trip out of the country and medical treatment cost a lot of money. But the Landlord has failed to prove a link between spending a lot of money on the trip and medical treatment and their alleged plan to move into the rental unit. The Landlord says they were forced to re-rent the rental unit house due to financial hardship. The Landlord said their original plan was to move out of their house and rent it out and move into the rental unit house. The Landlord has failed to prove why a change in their financial situation prevented their original plan from going ahead. I asked why the Landlord could not have moved into the rental unit house and rented out their house due to financial hardship and the answer was that A.B. could not move because of their medical diagnosis. The Landlord is again linking the inability to move to A.B.'s medical diagnosis, not to some proven financial hardship. As already explained, I do not accept that A.B.'s medical diagnosis prevented the Landlord from moving into the rental unit.

It is not enough for the Landlord to prove A.B. was diagnosed with a medical condition, the resulting symptoms or that they spent a lot of money on a trip and medical treatment. The Landlord must prove some connection between these things and being prevented from moving into the rental unit. The Landlord has failed to do so. Given this, the Tenants are entitled to compensation under section 51 of the *Act*.

The parties agreed rent at the end of the tenancy was \$1,250.00 per month and not \$1,300.00 as stated at the original hearing and in the original Decision. The Tenants are entitled to \$15,000.00 under section 51 of the *Act*.

The Tenants are entitled to recover the \$100.00 filing fee under section 72(1) of the *Act* because they have been successful in the Application.

The Tenants are issued a Monetary Order for \$15,100.00.

The original Decision and Monetary Order issued April 06, 2023, are set aside and replaced with this Decision and Monetary Order under section 82(3) of the *Act*.

Conclusion

The Tenants are awarded \$15,100.00 and are issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: May 31, 2023

Residential Tenancy Branch