



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNETC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and both tenants attended the hearing. As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the application and evidence. Based on the testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

Issue(s) to be Decided

Are the tenants entitled to:

1. Payment of an amount 12 times the monthly rent payable under the tenancy agreement?
2. Reimbursement of the filing fee for this application?

Background and Evidence

I have considered all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.

The rental unit is the upper unit of a single family house with both an upper and lower unit. The lower unit is tenanted to an unrelated party. The parties agree the tenancy began on January 1, 2020 and rent was \$1,877.75 at the end of the tenancy. On April 30, 2022, the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use with an effective (move-out) date of June 30, 2022. The notice states

the rental unit will be occupied by the landlord or the landlord's spouse. The tenants chose to vacate the rental unit early and were gone by the end of May 2022.

The landlord testified that she took possession of the rental unit on June 1, 2022. The unit was musty smelling and for that reason, the landlord replaced subflooring at the bathroom entrance and put down flooring. The landlord testified she fixed a bathtub leak and moved walls inside the house since the house was already sitting empty. The landlord was delayed in installing the flooring because she couldn't find a reasonably affordable installer through social media and had to do it herself. Other reasons were because she and her partner got covid and she suffered from other medical issues that the landlord chose not to identify during the hearing.

During this time, while the rental unit remained unoccupied, the landlord and her partner tried to sell the partner's townhouse. Restrictions on rentals were lifted by the government and an agreement to purchase the partner's townhouse fell through, causing the landlords to rent the partner's townhouse instead of selling it. The landlord testified that she moved into the rental unit on October 16, 2022 and has remained occupying it since.

The tenants claim compensation in the amount of \$22,533 arguing that the landlord failed to use the property for the stated purpose within a reasonable period after ending the tenancy.

Analysis

Section 51 RTA requires a landlord to pay compensation to a tenant if the landlord does not prove that they have accomplished the purpose for which the tenancy was ended within a reasonable period or, in some instances, did not use the rental unit for the stated purpose for at least 6 months duration.

Residential Tenancy Branch Policy Guideline provides landlords and tenants with information to address the issues under dispute before the Residential Tenancy Branch. Guideline 50 deals with compensation for ending a tenancy. It states:

Reasonable Period

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances...

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be **a short amount of time**. For example, if a

landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit **may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances.** For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

(emphasis in **bold** added)

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

In the dispute before me, the tenancy ended on May 30th and the landlord moved into the rental unit on October 16th, some four and a half months later. For the reasons below, I find the landlord failed to accomplish the reason for ending the tenancy (to occupy it) within a reasonable period after the tenancy ended.

I find it reasonable that the landlord would make minor cosmetic changes to the rental unit and repair any urgent items that need to be fixed, such as replacing the subfloor by the bathroom. Likewise, it is reasonable that the landlord would require a somewhat longer amount of time to have the small repairs done. I find four and a half months to be an unreasonable amount of time. The landlord is obligated under the legislation to have the repairs done expeditiously if she is not occupying the rental unit or to make the repairs while occupying it as her residence.

The landlord was clear in testifying she didn't move in until October 16th. The reason for ending the tenancy was to occupy the rental unit, not to leave it vacant and unoccupied while she prepared her partner's townhouse for rent or sale or to make repairs or renovations to her own rental unit. While it is possible the landlord was unaware of her obligation to use the rental unit for its stated purpose within a reasonable period after the tenancy ends, it doesn't exempt her from the consequences of her failure to do so.

Policy Guideline 50 provides examples of extenuating circumstances that may exempt a landlord from having to pay compensation. These are all matters that could not be

anticipated or were outside the landlord's reasonable control. I find the landlord presented insufficient evidence of any extenuating circumstances that would fall into this category. The sale of her partner's townhouse and subsequent rental of the townhouse is inconsequential to whether the landlord was going to reoccupy the rental unit formerly occupied by the tenants. Likewise, I don't find the inability to find an affordable flooring installer constitutes an extenuating circumstance which prevented the landlord from occupying the rental unit within a reasonable time frame. Further, the landlord's statement that she and her partner had covid was not supported by any documentary evidence and gave no timeframe for when they had it.

For these reasons, I find the landlord has failed to establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice. Pursuant to section 51, the tenants are entitled to an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement, \$22,533.00.

As the tenants' application was successful, the tenants are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I award the tenants a monetary award in the amount of \$22,633.00.

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 09, 2023

Residential Tenancy Branch