



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNECT FFT

Introduction

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

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

All parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. All parties confirmed that they understood.

At the outset of the hearing, the landlord confirmed their legal name, which was noted with an initial on the tenant's application. As neither party was opposed, the tenant's application was amended to reflect the landlord's full legal name.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenant's application and evidence. The tenant submitted additional evidence on April 18, 2023, which was not served on the landlord. As this evidence was not served on the landlord, this late evidence was excluded for the purposes of this hearing.

The landlord submitted written evidence, which the tenant was not able to retrieve and review as they work out of town. After discussing the matter with both parties, the tenant consented to allowing the landlord to send the documents to the tenant through email to review during the hearing. After reviewing the material, the tenant confirmed that they had sufficient time to review the materials, and took no issue with the admittance of the landlord's evidence and proceeding with the hearing as scheduled.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for money owed under the Act, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2003, and ended on October 31, 2021 after the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use. Monthly rent was set at \$950.20, payable on the first of the month.

A copy of the 2 Month Notice was submitted for this hearing, and notes the following reason for ending the tenancy: "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 spouse)". In response to the question "Please indicate which close family member will occupy the unit", the landlord had selected "The landlord or the landlord's spouse".

The tenant filed this application on November 23, 2022 as they had observed that the rental unit had been rented out, instead of being occupied by the landlord or their spouse. The tenant testified that the intercom was connected to their cellular phone, and the landlord did not change the number when they took possession of the rental unit. As a result, the tenant received repeated buzzer notifications from delivery drivers attempting to deliver packages to a party whose name differed from the landlord. The tenant testified that they had found new accommodation next door, and was therefore

able to meet with the delivery driver, and observed a man coming down to pick up the parcels. The tenant testified that this took place frequently after moving out.

The landlord testified that they had purchased the home for their parents to live in after arriving in Canada, and that they had to purchase the home in their name as their parents did not have credit in Canada. The landlord testified that their parents had provided the down payment for the home, which the landlord then purchased on their behalf.

The landlord communicated with the seller that they wished to serve the tenant with a 2 Month Notice in order to perform some renovations before their parents would move in. The tenant testified that their parents arrived in Canada on October 10, 2021, and on October 14, 2021 their father was admitted to the hospital due to medical issues. The landlord testified that their father was in and out of hospital, including being hospitalized for a month in February 2022. The landlord's father passed away on May 7, 2022. The landlord provided documentation for the October 14, 2021 visit as well as a copy of the death certificate.

The landlord testified that the entire family was occupied with their father and his declining health, and the landlord's mother was only able to occupy the rental unit from September 2022 to February 2023 before the landlord sold the rental unit in 2023 due to financial reasons. The new owners took possession in April 2023.

Analysis

Section 51(2) of the *Act* reads in part as follows:

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.*

(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 the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(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.

Policy Guideline #50 states the following about "Extenuating Circumstances" in the context of compensation for ending a tenancy under section 49 of the *Act*.

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

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.*
- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.*

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.*

A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the landlord had sold the home in April 2023. The landlord does not dispute that the home was not occupied by themselves or a close family member in the six month period following the effective date of the 2 Month Notice. The landlord testified that they were unable to fulfill their obligations due to extenuating circumstances, specifically the sudden onset of their father's medical issues on October 14, 2021, and eventual death on May 7, 2022. In consideration of Policy Guideline #50 and the definition of "extenuating circumstances", I find that the reason provided by the landlord fails to meet the criteria for "extenuating circumstances".

Although I am sympathetic towards the fact that the landlord's father became ill shortly before this tenancy had ended on October 31, 2021, I find that the reason for ending this tenancy was clearly noted on the 2 Month Notice: that the landlord wished to end this tenancy as it would be occupied by "The landlord or the landlord's spouse". Although the landlord testified that the home was purchased for their parents to occupy, the 2 Month Notice and accompanying letter does not reference this.

Furthermore, the landlord submitted in evidence their father's discharge documentation which was written and signed by the doctor on October 16, 2021. On page three of the document, the doctor noted that the patient was visiting from another country, and developed shortness of breath on exertion. The landlord noted that the patient "will follow up with his physicians in [country removed for privacy reasons], and I would be happy to see him sooner before he leaves if needed or desired". I find that these notes contradict the landlord's testimony that their father was moving into the rental unit for a significant period of time, rather than simply visiting as suggested by the doctor's notes.

Furthermore, the although the landlord testified to purchasing the home for their parents to occupy, and the provision of a downpayment from their parents, the landlord did not provide sufficient evidence to support the statements made by the landlord, specially the following:

- 1) A transfer of money from the landlord's parents for the downpayment
- 2) Any documentation to support that the landlord's parents were permanently re-locating to Canada from their home country, and would be occupying the rental

unit rather than simply visiting, as suggested by the doctor's notes in the discharge documentation.

- 3) Evidence to support conversations that took place or arrangements made for the landlord's parents to move to Canada and into the rental unit
- 4) Evidence to support that the landlord's mother moved in, and occupied the rental unit for a period of time, specifically September 2022 to February 2023.

As noted in RTB Policy Guideline #50, "Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit to a non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead."

In this case, I am not satisfied that the landlord had purchased the rental unit for occupation by their parents. As clearly noted on the 2 Month Notice, the landlord or their spouse intended to occupy the rental unit. The option for the father or mother of the landlord or landlord's spouse was not selected, nor did the landlord provide sufficient documentation that this was simply a typographical error, and that they had clearly communicated to the sellers that their parents would be occupying the home.

I find that the Discharge Documentation also raises the question of whether the landlord's father was simply visiting Canada. In the absence of further supporting documentation, I am not satisfied that the landlord had purchased the home for their parents to occupy it. I find that the evidence clearly supports that the tenant was served with the 2 Month Notice in order for the landlord or their spouse to occupy it, which the landlord failed to do. I find that the landlord failed to establish extenuating circumstances that prevented the landlord or their spouse from occupying the rental unit for at least six months following a reasonable amount of time. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 month's rent pursuant to section 51(2) of the *Act*.

As the tenant was successful in their claim, I allow them to recover the filing fee.

Conclusion

I issue a \$11,502.40 Monetary Order in favour of the tenant for compensation under section 51(2) of the *Act*, and for recovery of the filing fee.

The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: May 17, 2023

Residential Tenancy Branch