



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was scheduled to hear a tenant's monetary claim against the landlords for compensation payable where a landlord ends the tenancy for landlord's use and does not use the rental unit for the stated reason.

Both parties appeared and/or were represented at the hearing and the parties were affirmed. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued on January 4, 2023. The Interim Decision should be read in conjunction with this decision. As seen in the Interim Decision, I had ordered the landlord to submit and serve the utility bills for the rental unit for the six month period after the tenancy ended. At the start of the reconvened hearing, I confirmed the landlord accomplished this and I admitted the additional materials for consideration in making this decision.

Issue(s) to be Decided

1. Is the tenant entitled to compensation equivalent to 12 months of rent from the landlords under section 51(2) of the Act, as claimed?
2. Award of the filing fee.

Background and Evidence

An oral tenancy agreement started on August 1, 2012 with the tenant one of the co-owners of the property referred to by initials JS. The rent was \$1200.00 per month.

The subject property is owned 50% by JS and the two landlords named in this dispute jointly own the other 50%.

The landlords issued a Two Month Notice to End Tenancy or Landlord's Use of Property ("Two Month Notice") on March 29, 2021 with a stated effective date of June 1, 2021. The stated reason for ending the tenancy is so that the landlord's father or mother or father or mother of the landlord's spouse may occupy the rental unit.

The tenant initially filed to dispute the Two Month Notice issued on March 29, 2021 but then withdrew the application and vacated the rental unit by the effective date.

The tenant filed this application claiming the landlords did not use the property for the stated purpose.

Landlord's position

The landlord's father and mother moved into the rental unit on June 6, 2021 to watch over the landlord's cattle. The cattle were brought onto the adjacent pasture land owned by JS on June 28, 2021 for summer grazing. The cows returned to the landlord's property in October 2021; however, a couple of bulls remained on JS's property until December 2021.

The rental unit is approximately a one hour drive from the landlord's home by way of approximately 60 km of back roads. Years ago, the landlord's father had lived on the subject property to provide caretaking for the landlord's sheep and the landlord's father was willing to watch over the cattle while they were on JS's adjacent pasture land.

The landlord's parents moved out of the rental unit in the last week of November 2021 and returned to residing at their ordinary residence on landlord's property. The landlords recognize that their parents left the rental unit shortly before the six month requirement was met but provided a reason the parents moved out of the rental unit as follows.

The rental unit is rural and remote. In the fall of 2021 the landlord's father started to experience dizzy spells and he and the landlord's mother became very fearful that the landlord's father would suffer a fall while out in this more remote location. The landlords provided a doctor's note, letters from the landlords parents, the landlords' uncle, and another witness, in an effort to corroborate the reason the landlords' parent left the rental unit in late November 2021.

The landlord submitted that it was hoped that the landlords' parent may return to the rental unit for the summer grazing period of 2022 but the landlords were able to find different pasture to rent from an oil and gas company nearer their home.

After the parents returned to their ordinary home, and up until the hearing, the rental unit remains vacant.

Tenant's position

The tenant submitted that the landlord's parents moved some possessions into the rental unit but they were at the rental unit once in a while and the landlord's parents did not move into the rental unit on a permanent basis.

The tenant spoke to the neighbour who informed the tenant that she hardly ever saw anybody at the rental unit.

The tenant acknowledged that the landlords had cattle on the adjacent pastureland but he did not see anybody looking after them except one time he saw the parents on the deck of the rental unit.

After the tenancy ended, the tenant saw a recreational vehicle parked in the driveway with a light on, suggesting the landlord's parents may have lived in the motorhome.

The tenant pointed out that the landlords' parent had stayed in a small cabin on the property in 2009 when they took care of the sheep and the cabin had was vacant when he was served the Two Month Notice so they could have stayed in the cabin. The tenant also submitted that there was a trailer on the property that had been occupied by JS's friends occasionally, suggesting the parents could have stayed in the trailer instead of the rental unit.

The tenant was of the position the doctor's note indicates the father had dizzy spells in May 2021 and if that was the case, he opined the landlords should not have had their father stay at the rental unit.

Landlord's response

The landlord refuted that the parents did not have many possessions moved into the rental unit. The landlord stated their parents had a living room set, dining room set, bed, quilting machines, sleeper couches for guests, patio furniture, plants, TV, dogs and dog beds, as seen in the photographs.

The landlords' father's brother also visited the parents at the rental unit, as seen in the photographs.

The landlord acknowledged there was a motor home parked on the property that was used once but the parents did not reside in the motor home. Neither the older smaller cabin, nor the old trailer, were suitable living accommodation for their parents in 2021.

The landlord questioned how much the neighbour could actually see as there is a long driveway and bushes that obscure the view of the rental unit. The landlord acknowledged their parents did not leave the rental unit often. They usually spent their time indoors, watching TV, and would check on the cows once a day. On weekends, the parents would visit the landlords at their home.

Analysis

Where a tenancy is ended under section 49 of the Act, section 51 of the Act provides for compensation payable to the tenant.

The application before me is for additional compensation equivalent to 12 months of rent that is provided for under section 51(2) of the Act. Section 51(2) states:

(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.

[My emphasis added]

In this case, the tenant questioned whether the landlord's parents moved into the rental unit at all.

The landlord provided several pieces of evidence to show that the parents did move into the rental unit in June 2021 and moved out in late November 2021. This included:

- electricity and propane bills for the six months after the tenancy ended that shows the electricity consumption varied and deliveries of propane for the hot water and furnace
- photographs of the deck of the rental unit with patio furniture and several potted plants
- a photograph of a visiting relative (the landlords' uncle) sitting on the deck of the rental unit
- photographs showing the dog of the landlord's parents sleeping on a dog bed in the rental unit
- Footprints of a person and dog(s) in the snow on the deck of the rental unit
- letters written by the landlord's parents and the brother of the landlord's mother who was visiting Canada from June 2021 through November 2021.

Upon review of all of the evidence before me, especially the utility bills that appear to demonstrate the rental unit is being occupied, and photographs showing the parent's guest, pets and possessions at the rental unit, I find on a balance of probabilities, that the landlord's parents did occupy the rental unit for the period of June through November 2021.

Although the tenant argued the landlords' parents did not make the rental unit their permanent primary home, the Act does not require that. Rather, the Act only requires that the landlord or close family member "occupy" the rental unit. The Act does not provide a definition of "occupy" so I apply its ordinary meaning. The ordinary meaning does not mean one's permanent or primary residence.

Although I am satisfied the landlord's parents occupied the rental unit after the tenancy ended, it is undeniably for a period of time that is less than six months, as is required under section 51(2)(b) of the Act. Therefore, I find compensation equivalent to 12 months of rent is payable to the tenant unless the landlords are excused from having to pay the compensation under subsection 51(3).

Subsection 51(3) provides a mechanism for the Director, as delegated to an Arbitrator, to excuse the landlord from having to pay the compensation provided under section 51(2) if "extenuating circumstances" prevented the landlord from accomplishing the stated purpose for at least six months.

Residential Tenancy Policy Guideline 50 provides information and examples of extenuating circumstances. The policy guideline describes extenuating circumstances as 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.

Whereas 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.

The landlord pointed to their father experiencing dizzy spells in the fall of 2021 and the fear of him falling while out at the remote location of the rental unit as being the reason the landlord's parents did not stay the entire six months. The tenant questioned whether the dizzy spells started before the fall of 2021.

The landlords provided a letter from the doctor of the landlord's father. The doctor's letter confirms the father is experiencing dizzy spells and that it is imperative that he move back home to have the assistance of family members. In reading the doctor's letter, it appears to me the doctor is confirming that the landlord's father became his patient in May 2021 and it clearly states the dizzy spells commenced in the fall of 2021. The doctor indicates that the father has several health conditions and was being seen by a cardiologist and that there was an increased risk of falling as a result. The landlord's mother and father also wrote letters describing the onset of dizzy spells and the fear of falling. Another two witnesses wrote letters describing dizzy spells and the need for the landlord's father to sit down to avoid falling while having dizzy spells in the fall of 2021.

Based on the evidence before me, I am satisfied the dizzy spells started in the fall of 2021 and after the landlord's parents had already moved into the rental unit. Thus, I accept that this new development was not anticipated when the tenancy had ended and the landlord's parents moved into the rental unit. I am further satisfied that the dizzy spells created a risk of falling and given the remoteness of the rental unit and the doctor's opinion that the landlord's father move closer to the landlords for assistance with daily living, an extenuating circumstance prevented the landlords from fulfilling the six month requirement. Therefore, I excuse the landlords from having to pay the tenant the compensation under section 51(2) and I dismiss the tenant's claim.

Conclusion

Under section 51(3) of the Act, the landlords are excused from having to pay compensation to the tenant and the tenants claim is dismissed.

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 24, 2023

Residential Tenancy Branch