



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Dispute Codes: MNECT FT

Introduction

The Tenants seek compensation pursuant to section 51(2) and 72(1) of the *Residential Tenancy Act* (the “Act”).

This matter was first set down for a hearing on January 10, 2023. I adjourned the hearing to give counsel an opportunity to properly serve the Landlords’ evidence.

Issue

Are the Tenants entitled to compensation?

Evidence and Analysis

In reaching this decision, I have only considered relevant oral and documentary evidence that helped resolve the issues of the dispute. The parties (but not counsel) were affirmed.

The tenancy began in 2017. On August 30, 2021, the Landlords, who recently purchased the rental unit, served the Two Month Notice to End Tenancy for Landlord’s Use of Property (“Notice”) upon the Tenants. The Tenants did not dispute the Notice and the tenancy ended October 31, 2021. Monthly rent was \$1,950.00.

As described in the Tenants’ particulars in their application, they seek compensation under section 51(2) of the Act because as follows (reproduced as written):

The landlord gave me a 2 month notice to end tenancy on 2021-08-30, stating the reason for 2 months to end the tenancy was the rental unit would be occupied by the landlord and/or the landlords spouse. At the 2 month end, I had moved out and vacated the rental unit. The landlord then listed the rental unit in ads as available for rent at a higher increased rental amount. The landlord did not attempt to occupy the unit as stated in reason for end in tenancy, was dishonest in statement.

The Notice was submitted into evidence, and it confirmed—as the Tenant also confirmed during testimony—that the rental unit would be occupied by the Landlords or their close family member, as is permitted under section 49(3) of the Act.

The Tenants moved down the block but within a few weeks stumbled across an ad in which the rental unit was being listed for rent at \$2,600. On December 1 the Tenants observed a moving van out front of the rental unit and new tenants. At no time did they observe the Landlords move into the rental unit.

Landlords' counsel acknowledged that there is no dispute with these facts.

Section 51(2) of the Act states that

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 the landlord or purchaser, as applicable, 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, except in respect of the purpose specified in section 49(6)(a), 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.

Based on the undisputed fact that the Landlords did not occupy the rental unit, and that the rental unit was not used for this purpose for at least six months' duration, it follows that the Landlords must pay the Tenants an amount equivalent to twelve times the monthly rent as payable under the tenancy agreement. That amount is \$23,400.

However, counsel made submissions (which were affirmed as accurate and truthful by the husband-and-wife Landlords) that there existed extenuating circumstances that prevented the Landlords from occupying the rental unit.

As an aside, while I appreciate counsel's references to good faith intentions to occupy the rental unit when the Notice was given, good faith is generally only considered when a

tenant disputes a notice to end tenancy given under section 49 of the Act. Good faith is not considered in this type of claim after a notice to end tenancy was adhered to.

Subsection 51(3) of the Act, which essentially acts as a legal defense, states that

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 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, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Counsel provided numerous physician's notes and correspondence regarding the wife Landlord's medical issues and difficulties. The Landlord was involved in MVAs in 2015 and 2017, and the aggravated injuries from those MVAs ultimately led to the Landlord going on long-term disability in November 2021.

It is not lost on me that the Landlord has suffered, and continues to suffer, from various maladies that prevent her from returning to work in the healthcare field. However, what is absent is any argument, supported by any documentary evidence, persuading me to find that the Landlord's circumstances prevented her, her husband, and their sons, from moving into and occupying the rental unit. There is no evidence before me to find that the physical condition prevented the Landlords from being sufficiently mobile to move into and occupy the property.

In short, I respectfully disagree with the Landlords' argument that there were extenuating circumstances that prevented the Landlords from occupying the rental unit within a reasonable period after October 31, 2021. Nor do I find that there were extenuating circumstances that prevented the Landlords from occupying the rental unit for at least six months' duration beginning within a reasonable period after October 31, 2021.

Taking into careful consideration all the relevant oral and documentary evidence before me, it is my finding that the Tenants have proven a claim for compensation under section 51(2) of the Act. The Tenants are therefore awarded \$23,400.00.

Under section 72 of the Act, the Residential Tenancy Branch will generally order an unsuccessful party to reimburse a successful party for the application fee. As the Tenants were successful, the Landlords must pay the Tenants \$100.00 for the application fee.

Conclusion

For the reasons given above the Tenants' application is granted.

Pursuant to sections 51(2) and 72 of the Act the Landlords are ordered to pay \$23,500.00 to the Tenants. A copy of a monetary order is issued in conjunction with this decision to the Tenants, and the Tenants must serve a copy of this order upon the Landlords.

Under section 85 of the Act, a copy of this decision and the accompanying monetary order may be filed and enforced in the Provincial Court. Once filed, the decision and the order have the same effect as a judgment or an order of the Provincial Court.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 3, 2023

Residential Tenancy Branch