



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNECT FFT

Introduction

This hearing was originally scheduled to be heard on January 19, 2023 and was adjourned to May 11, 2023.

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 pursuant to section 72.

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

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

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.

The tenant had entered into a fixed term tenancy agreement with the previous landlords from February 1, 2021 to January 31, 2022. Monthly rent was set at \$1,550.00 payable on the first of every month. It was undisputed by both parties that this tenancy had ended on February 1, 2022, after the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit". A copy was included as part of the tenant's evidence.

The tenant is seeking compensation as the home was never occupied by the respondent, and re-rented as two suites instead. The upstairs suite was re-rented for \$2,500.00 per month, while the basement suite was rented out for \$1,200.00 per month. The respondent confirmed in the hearing that the intention was to move in, but due to an unforeseen change in circumstances, the respondent had decided to rent out the suites instead.

The respondent provided a written statement describing why they could not occupy the property due to extenuating reasons. The respondent states that their mother developed a serious knee problem that caused pain every time their mother walked. Their mother was referred by their family doctor to a specialist, who informed the respondent that their mother be put on complete rest, not lift anything, and have regular physiotherapy sessions, as well as inject medication into the knee. The respondent provided medical documentation related to their mother's knee.

The respondent states that they were forced to remain in the family home to take care of their mother. The respondent provided a list of tasks they had to perform including taking their mother to their doctor's and physiotherapy appointments, assist with using

the bathroom and stairs, and cooking and providing their mother with the basic necessities. The respondent also provided emotional support.

The respondent testified that their mother had ongoing health issues since November 2021, and it was not until January 2022 when their mother was referred to a specialist. The respondent testified that they were not provided with the tenant's contact information by the seller, and did not have the means to communicate with the tenant to extend the tenancy.

The respondent testified that their mother was too afraid to undergo knee surgery, and opted for injections instead. The respondent testified that the other family members who reside there have to be away for several days at a time for work, and do not have regular schedules.

The tenant questioned the respondent's explanation, and whether their mother truly required the respondent to stay in the family residence instead of occupying the home.

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.*

I have considered the testimony and evidence of both parties, and I find that it was undisputed that the respondent had re-rented the home instead of occupying it themselves. By doing so, the respondent failed to comply with section 49(3) of the Act.

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 find that the reasons provided for re-renting the home are not sufficient to support that there were extenuating circumstances that prevented the respondent and their family from using the home for the stated purpose. Although the evidence does support that the respondent's mother had a knee condition, and was referred to a specialist in January 2021, I am not satisfied that this should have prevented the respondent from being able to occupy the home for at least six months as required. Although the respondent's statement was that the specialist had informed them that their mother was "to be put on complete rest" or "not lift anything", I find that there is nothing in the documentation provided that confirms this.

Furthermore, I find that the respondent failed to provide sufficient evidence to support that they had exhausted their options for care alternatives, whether that be having their mother move in with them in the new home, or making arrangements for the recommended surgery if the pain was so significant that their mother would require this amount of care. Although the respondent testified that other family members' work schedules could not accommodate their mother's care, the respondent did not provide any evidence to support that this was truly the case.

I find that the respondent made the decision to re-rent the home, for substantially more rent, instead of occupying it as required. I find that the respondent's explanation does not fall under the definition of extenuating circumstance as set out in the *Act* and *Policy Guidelines*. Accordingly, I find that the tenant is entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the respondent's noncompliance. I issue a monetary award to the tenant in the amount of \$18,600.00.

As the tenant was successful in their claim, I find that they are also entitled to recover the filing fee for this application.

Conclusion

I issue a \$18,700.00 Monetary Order in favour of the tenant in compensation for the respondent's failure to comply with section 49(3) of the *Act*, and for recovery of the filing fee for this application.

The respondent(s) must be served with this Order as soon as possible. Should the respondent(s) 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: June 09, 2023

Residential Tenancy Branch