



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNECT FFT

Introduction

This hearing dealt with the tenants' 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.

Both 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. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenants' application. Both parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlords?

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 June 1, 2019, with monthly rent set at \$1,539.00, payable on the first of every month. It was undisputed by both parties that this tenancy had ended on August 31, 2021 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 tenants' evidence.

The tenants are seeking compensation as the new owners of the home, the respondents in this hearing, did not use the home for the stated purpose on the 2 Month Notice. The respondent confirmed in the hearing that the intention was to move in, but due to an unforeseen change in circumstances, the respondents had decided to rent out the home instead.

The respondents testified in the hearing that they had a baby in February 2021, and that the PK was on maternity leave. PK wrote a statement, which was submitted in evidence. In the statement, PK states that they "developed left Plantar Fasciitis in Sept, which caused pain and difficulty in walking. For the same reason I needed more assistance to take care of my new born baby". PK and her husband decided to reside with PK's mother-in-law instead of moving into the home they had purchased, as the mother-in-law was retired and could assist PK and with taking care of the baby. PK testified that her husband was unable to take time off for financial reasons.

PK stated that it took almost six months to recover, which required physiotherapy and massage therapy. The respondents submitted receipts for these treatments, as well as doctor's note dated March 14, 2023 confirming that PK was being treated for plantar fasciitis since September 2021, and was referred to physiotherapy and massage therapy. The landlords also submitted a receipt for custom orthotics to treat the plantar fasciitis, a medical imaging report for an exam on October 21, 2021 that stated "there is a very tiny calcaneal spur. NO additional bone or joint abnormalities", and a doctor's referral dated November 6, 2021 which stated "she is a 35 year old female with left sided severe plantar fasciitis".

As the respondents were unable to move in, and for financial reasons, the respondents stated that they had no choice but to re-rent the home.

The tenants challenge the credibility of the respondents statements as they had found the rental listings in August 2022, just after the sale of the home was completed. The tenants filed this application on August 15, 2022, and submitted copies of advertisements in support of their claim. The tenants also note that the respondents had advertised the home for monthly rent of \$2,600.00, which was substantially more than the \$1,539.00 that the tenants were paying.

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 respondents had re-rented the home instead of occupying it themselves. By doing so, the respondents 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 PK did develop and suffer from plantar fasciitis, I am not satisfied that this should have prevented the respondents from being able to occupy the home for at least six months. Although the respondents' statement was that they did not know how long they would suffer from plantar fasciitis, none of the documentation referenced the condition as a permanent or chronic one. As noted in PK's own evidence, they eventually were able to recover with treatment.

Although the baby was referenced as a "newborn", by September the baby was already 7 months old. Furthermore, as noted by the respondents, the mother in law was retired, and therefore did not have work obligations. The respondents did not provide an explanation for why they could not consider alternatives such as having the mother in law move in to assist for the remainder of the maternity leave.

I find that the respondents made the decision to re-rent the home, for substantially more rent, instead of occupying it as required. I find that the respondents' explanation does not fall under the definition of extenuating circumstance as set out in the *Act* and *Policy Guidelines*. Accordingly, I find that the tenants are entitled to compensation equivalent to 12 times the monthly rent as required by section 51(2) of the *Act* for the respondents' noncompliance. I issue a monetary award to the tenants in the amount of \$18,468.00.

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

Conclusion

I issue a \$18,568.00 Monetary Order in favour of the tenants in compensation for the respondents' 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