

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing convened by teleconference on May 8, 2023, to deal with the tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) and recovery of the filing fee.

The tenants, the landlord, and the landlord's legal counsel (counsel) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The hearing continued for 73 minutes, at which time the hearing was adjourned due to the length of time exceeding the one hour scheduled for the hearing. An Interim Decision was issued on May 9, 2023, which is incorporated by reference and should be read in conjunction with this Decision.

At the reconvened hearing, the same parties attended.

The parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenant submitted that they did not receive the landlord's evidence and submissions within the required timelines or service to all the applicants. For this reason, the tenants objected to the landlord's evidence, as they did not have sufficient time to respond. I

elected to proceed with the hearing as I find that the tenants did receive the evidence and submissions and had time to prepare a response to provide at the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act and recovery of the cost of the filing fee?

Background and Evidence

The evidence at the hearing showed that the tenancy started on October 15, 2020, ended on September 26, 2022, and monthly rent at the end of the tenancy was \$1928.50. Filed in evidence was the written tenancy agreement, listing tenant APB as the only tenant and a numbered company and the landlord here as landlords.

The tenants' monetary claim is \$22,800, which is the equivalent of 12 times the monthly rent payable at the beginning of the tenancy, at \$1900 per month.

The tenants wrote in their application the following:

On July 29th 2022, (landlord first name) gave us a 2 months notice to end our tenancy claiming she or her spouse will be living in the unit. We moved out of said unit on September 25th 2022, and on October 2nd 2022, a friend of my sister's posted a photo of our previous home claiming that she now lives there. As this said claim of (landlord first name) appears to be false we believe she has not acted in good faith. My family and I are claiming this amount for one years compensation in the time we have rented under (landlord first name)

[Reproduced as written except for redacting personal information to protect privacy]

The Notice received from the landlord was dated July 29, 2022, listing an effective move-out date of October 1, 2022. Filed in evidence was the 2 Month Notice.

The reason for ending the tenancy states that the rental unit will be occupied by the landlord or the landlord's spouse.

In response to the tenant's claim, the landlord proceeded first in the hearing.

Counsel for the landlord stipulated that although the landlord intended on moving into the rental unit with their daughter, the landlord did not move into the rental unit after the tenancy ended. The landlord claims that extenuating circumstances prevented them from using the rental unit for the stated purpose.

The original intent was for the landlord and daughter to move in because of the landlord's husband's mental health making their living situation unsafe. Before moving in, the landlord's husband's mental illness went into remission, and as the landlord was her husband's caregiver, needed to be back at home.

In testimony, the landlord submitted the following: The landlord said the issue concerned hers and her daughter's safety from day to day due to her husband's behaviour, which varied daily. Before the diagnosis, her husband's behaviour was violent and erratic, and their daughter was fearful of her safety. The landlord left the family home 6 times in 2022 and stayed with a cousin's daughter. A letter from the cousin's daughter was filed in evidence.

The landlord chose this rental unit to move into so that her husband would not know where she lived.

The landlord's husband was eventually diagnosed with bi-polar disorder, and his behaviour was erratic, irate, loud, aggressive and detached from reality.

When her husband's medication began working, the landlord made the decision in late September to not move in as leaving her husband would be unsafe due to his depression when he was "coming down".

The landlord found a new tenant for the rental unit from a recommendation from another tenant living on the residential property.

In response to my inquiry, the landlord confirmed that on the residential property was an upper and lower suite home, with two sets of tenants in both suites, and a laneway house, with another tenant. The landlord has 6 other rental units besides the 3 on this property. The other 6 rental units were not close to their family home. The landlord

chose to evict the tenants here because the tenant in the laneway home and the tenant in the upper unit have babies.

Additional evidence filed by the landlord included a doctor's statement, indicating the landlord's husband was diagnosed with Bipolar Affective Disorder on September 1, 2021, and a written tenancy agreement showing a new tenancy starting on the day after the tenants vacated.

Tenant's response –

The tenant testified to the following: The landlord had two other tenants living on the residential property, but instead the landlord chose to evict a single mother with 3 children. The tenant questioned why none of the tenants on the residential property or their tenants in all their other rental properties were evicted instead of the tenants. The tenants had their final inspection on September 26, 2022, and the landlord had already been in contact with their new tenants prior to September 26, 2022. The landlord's husband's diagnosis was over a year prior to the eviction notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

While I have reviewed the evidence and submissions filed prior to the hearing and the oral evidence from the hearing, I refer to only the relevant evidence regarding the facts and issues in determining this Decision.

While both parties argued whether the landlord acted in good faith, good faith is required of a landlord when they issue a 2 Month Notice to end the tenancy. The good faith consideration is not a component of, or consideration for, a monetary claim for compensation under the Act, as will be more fully set out.

The *Gichuru v Palmar Properties Ltd.* is cited in Tenancy Policy Guideline as guidance for instances in considering the good faith intention when the issue is whether the 2 Month Notice should be cancelled or enforced.

For this reason, I distinguished that decision from the circumstances before me. I also distinguish the previous RTB Decision from the present decision, as the arbitrator discussed good faith and because the facts, I find, were not similar to the present case.

The other case filed in submissions was not argued at the hearing, but I find is factually distinguished from the case at hand.

Under Tenancy Policy Guideline 2A, the onus is on the landlord to prove they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least 6 months.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In the case before me, the undisputed evidence shows that the tenant was issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, listing an effective date of October 1, 2022. In this case, the Notice listed that the rental unit will be occupied by the landlord or the landlord's spouse.

Section 51(2) of the Act provides that if 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 if 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, the landlord must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the undisputed evidence is that landlord never occupied the rental unit and the rental unit has now been re-rented instead, I find the landlord must pay the tenants the amount of \$23,142, the equivalent of 12 times the monthly rent at the end of the tenancy of \$1,928.50.

Section 51(3) of the Act authorizes the Director to excuse the landlord from paying the tenants the equivalent of 12 times the monthly rent if, in the Director's opinion, extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or from 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.

Guideline 50E outlines 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.

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.

While the landlord's husband's behaviour may very well have been as described by the landlord, I find there was insufficient evidence of that behaviour being a threat to the landlord's and their daughter's safety, or for how long it had been ongoing. The landlord provided two written statements, one from a staging and interior designer and one from a relative.

I placed little to no weight on the two letters. From my reading, I find these statements were more in the way of a recounting of events told to them, not firsthand accounts. For instance, in the designer's letter, they specifically wrote, "*My understanding is the (*landlord abbreviated first name*) was going through some personal challenges....*". Apart from that, the parties did not appear at the hearing to provide testimony of personal, or firsthand knowledge of the landlord's husband's behaviour and did not sign an affidavit.

Additionally, while I accept the landlord's husband was diagnosed with the bipolar affective disorder, I find the landlord submitted insufficient evidence that the behaviour had improved with medication. Further, I find the landlord submitted insufficient evidence to show what had changed from the time the 2 Month Notice was issued to the tenants to the time the tenants vacated shortly before the effective move-out date. At the very least, I would expect the landlord to provide medical records that the medication was working or a medical letter that the situation had improved. Simply stating that the matters had improved, without anything further, I find is insufficient evidence.

Further, the landlord was listed on the medical diagnosis form as the family member providing continuing care. As the landlord gave the Notice because they intended to occupy the rental unit for residential purposes, I would have expected a medical clinical report or something similar, to show that someone else was appointed to give continuing care. Considering the diagnosis report showed that the landlord's husband required continuing care, I find it highly unlikely that a care plan was not put in place to show who would provide the care.

For these reasons, I find the landlord submitted insufficient evidence that extenuating circumstances prevented them from occupying the rental unit for at least 6 months after the effective date of the Notice.

As I have found the landlord must pay the tenants compensation equal to 12 times the monthly rent due under the tenancy agreement, or \$1,928.50, and as I have found insufficient evidence of extenuating circumstances preventing the landlord from occupying the rental unit, I find the tenants have established a monetary claim of **\$23,142**.

I find merit with the tenants' application and award them recovery of their filing fee of **\$100**, pursuant to section 72(1) of the Act.

As a result, I grant the tenants a **monetary order (Order) of \$23,242**.

Should the landlord fail to pay the tenants this amount without delay, the tenants must serve the Order on the landlord for enforcement purposes by means under section 88 of the Act. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants' application for monetary compensation has been granted in the above terms.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 2, 2023