



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement, pursuant to section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenant PM and witness ST and landlords WL and YC attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords confirmed receipt of the notice of hearing and the evidence served with the notice of hearing (the materials) and that they had enough time to review the materials.

The tenant confirmed receipt of the landlord's response evidence.

The tenant did not serve the second evidence package submitted to the Residential Tenancy Branch (RTB) in June 2023.

Based on the testimonies I find that each party was served with the respective materials in accordance with section 89(1) of the Act, except the documents submitted to the RTB in June 2023.

Per Rule of Procedure 3.14, I excluded the tenant's evidence submitted in June 2023.

Preliminary Issue – Correction of the tenant's Name

At the outset of the hearing the tenant corrected the spelling of her first name.

Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application.

Issues to be Decided

Is the tenant entitled to:

1. a monetary order in an amount equivalent to twelve times the monthly rent?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered."

Both parties agreed the tenancy started on January 15, 2021 and ended on June 30, 2022. Monthly rent when the tenancy ended was \$3,100.00, due on the first day of the month. The landlord collected and returned a security deposit.

Both parties also agreed the landlords served and the tenant received an incomplete two month notice to end tenancy for landlord's use on May 20, 2022 and a new complete two month notice to end tenancy for landlord's use (the Notice) on May 27, 2022. The landlords served the Notice for YC's mother to move to the rental unit.

The tenant submitted a copy of the Notice dated May 27, 2022 into evidence. It states the landlord's mother will occupy the rental unit. The effective date was July 31, 2022 (the Notice's effective date).

The landlords claim that extenuating circumstances prevented YC's mother from occupying the rental unit for six months after the Notice's effective date.

YC has a progressive brain disease and has difficulty speaking and moving. Due to YC's health issues her mother decided to come to Canada to help YC and the landlords' children in November 2021. YC's mother lived with the landlords, as she expected to return to her birth country soon.

The landlords decided to serve the Notice in May 2022 because YC's health did not improve and her mother would need to stay in Canada for a longer period of time to help YC. The landlords live in a house located approximately a 20-minute drive from the rental unit.

YC's health situation worsened in the end of June and early July 2022. YC affirmed that on July 01, 2022 she planned to go for a barbecue, but she could not leave the bed due to a stroke.

YC needed to do a complex surgery because of her health situation. The surgery was expected to happen in British Columbia in 2022 but was delayed several times. Considering her worsening health situation in late June and early July 2022 YC decided on July 30, 2022 to pursue medical care in her birth country. YC travelled overseas with her mother on August 20, 2022, as her mother needed to help her before and after the complex surgery.

YC stated that she needed to quarantine because of the pandemic when she arrived in her birth country, she had her first healthcare appointment on September 3 and a body-scan on September 6, 2022. The surgery only happened on October 18, 2022 because of the pre-surgery exams. YC needed to recover and to do check-ups in her birth country until May 18, 2023 because of the complex surgery. YC's mother needed to assist YC all the time and they both returned to Canada on May 18, 2023.

The landlords submitted a letter dated March 30, 2023:

I am writing to confirming the status of my patient YC. In 2017 she had a small stroke and was found to have severe narrowing of her cerebral arteries on the left side. This latter condition was latter diagnosed as MMD, a rare condition which causes dangerous narrowing of the arteries supplying blood to the brain.

YC was originally scheduled to have brain surgery in BC, some time in 2022. With this in mind, YC and her husband arranged to have YC's mother temporarily move to BC from [redacted] in order to help YC as she recovered from her surgery.

However, there were numerous delays in YC's treatment in BC and by August 2022, there was still not date for surgery. Therefore YC decided to go [redacted] in August

2022 and receive treatment there. She eventually had brain surgery [redacted] in Octobre 2022.

Signed: Physician

The landlords submitted the discharge summary dated March 22, 2023 indicating that YC had the surgery on October 18, 2022:

YC reported that having two episodes of stroke like events on March and August, 2017, TIA with right side weakness, slurred speech, short of breath, face numbness while fatigue. Above mentioned symptoms subsided during 2018-2020, however, the symptoms has been raged almost every 1-2 month since end of the 2020, and resolving spontaneously within the other day, which was easily happened when she having period. On 2021, she received CTA again, and MMD disease was diagnosed, then operation was suggested at Canada. Considering accessibility of healthcare, she returned to [redacted] and visited [hospital] for help. 2022/09/06 Brain MRI With/Without Contrast was arranged and which indicated that MMD with left MI occlusion. A small old infarction in left cerebral white matter and a tiny recent infarction in left putamen. Prominent leptomeningeal collaterals from left ACA and PCA, with a small area of impaired perfusion in left centrum semiovale and parietal lobe. Operation is indicated and consultation of adult NS for direct revascularization was suggested for her to choose. She then decided to receive indirect ravascularization was admitted to our ward today for scheduled inpatient evaluation, and cerebral angiography and operation will be arranged on 2022/10/17 and 2022/10/18, respectively.

The tenant testified she believes YC's testimony about her health and that she is sorry for her health situation. The tenant inquired why the March 30, 2023 letter does not state that YC had a stroke in July 2022.

WL said that his cousin moved to the rental unit in August 2022, as YC's mother was not able to move there anymore due to YC's worsening health situation. WL's cousin moved temporarily to Canada to study English for a few months and was looking for a short term rental. WL's cousin moved out of the rental unit in the end of March 2023. The landlord advertised the rental unit on March 01, 2023 asking for \$4,000.00 per month and re-rented it on May 15, 2023 for \$3,600.00 per month.

The tenant affirmed the landlords served the Notice in bad faith and they intended to have WL's cousin occupy the rental unit and pay a higher rent.

The tenant stated the landlords tried to sell the rental unit in March 2022. The landlords testified they tried to sell the rental unit to have money to be able to pay for the surgery

in a reference center in the USA. As the landlords did not sell the rental unit, they decided to have the surgery in their birth country.

Analysis

I accept the uncontested testimony that the landlords served the Notice on May 27, 2022 because YC's mother intended to occupy the rental unit.

Section 51(2) of the Act states that a landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that the stated purpose for ending the tenancy was accomplished.

Section 51(3) states the landlord may be excused from paying the tenant the amount required by section 51(2) if extenuating circumstances prevented the landlord from accomplishing the stated purpose for ending the tenancy.

As the landlords claim that extenuating circumstances prevented YC's mother from occupying the rental unit for six months after the Notice's effective date, the onus is on the landlords to prove the extenuating circumstances, per Rule of Procedure 6.6.

RTB Policy Guideline 50 states:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- ☐ A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- ☐ A landlord ends a tenancy to occupy a rental unit and they change their mind.
- ☐ A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

(emphasis added)

The commonality of the examples outlined in the guideline for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority or control over the event.

The tenant did not dispute YC's testimony about her health situation. Considering YC's detailed and convincing testimony, the letter dated March 30, 2023 and the document dated March 22, 2023, I find that YC has a brain disease since 2017, YC's health condition worsened in the end of June and early July 2022, YC was expecting to have a complex surgery in British Columbia but this surgery could not happen and YC decide to pursue the surgery overseas on July 30, 2022.

I accept the uncontested testimony that YC and her mother were overseas from August 20, 2022 to May 18, 2023, as the surgery happened on October 18, 2022 and YC needed to stay overseas with her caregiver mother due to pre and post-surgery medical appointments.

Considering the detailed testimony provided, the letter dated March 30, 2023 and the document dated March 22, 2023, I find that it is not relevant that the March 30, 2023 letter does not mention that YC had a stroke in June or July 2022.

Thus, I find the landlords proved, on a balance of probabilities, that YC's health condition worsened in late June and early July 2022 and because of this YC needed to be overseas for a complex surgery with her caregiver mother from August 20, 2022 to May 18, 2023. YC does not have control over her health condition. I find the worsening health condition was an extenuating circumstance.

As such, the landlords are excused from paying the 12-month rent compensation under section 51(2) of the Act.

The tenant could have disputed the Notice but chose to comply with it and move out. The points raised by the tenant would have been relevant in an application to cancel the Notice, but not in this application. The landlords had to prove that an extenuating circumstance happened, and they did so.

Based on all the above, I dismiss the tenant's application.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

Conclusion

I dismiss the application without leave to reapply.

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 19, 2023

Residential Tenancy Branch