



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

DECISION

Dispute Codes: MNETC FFT

Introduction

The Tenants seek compensation pursuant to section 51(2) of the *Residential Tenancy Act* (the “Act”). The Tenants also seek to recover the cost of their application fee.

This matter was first heard on February 7, 2023, at which time it was adjourned for the purposes of giving the parties an opportunity to exchange evidence (see Interim Decision, February 7, 2023). The matter was then heard on June 30, 2023.

Issue

Are the Tenants entitled to compensation?

Evidence and Analysis

In reaching this decision, I have considered only the necessary and relevant evidence needed to resolve the issue of the dispute and to explain the decision.

The Facts

The tenancy began in 2018 and ended on February 28, 2022. Rent at the time the tenancy ended was \$2,233.00, however, this amount was increased on the last month

of the tenancy. (And Tenants are entitled to not having to pay the last month's rent when given a notice to end tenancy under section 49 of the Act.) The rent that the Tenants paid during the tenancy was, for the purposes of this application, \$2,200.00. A copy of a written tenancy agreement was in evidence.

The tenancy ended by way of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") that was served by the Landlord on the Tenants in December 2021. A copy of the Notice, which was not signed but not dated by the Landlord, was in evidence. Page two of the Notice indicated that the reason for the Notice was that the rental unit will be occupied by the Landlord or the Landlord's spouse. The Notice indicated that the Tenants would need to vacate the rental unit no later than February 28, 2022, which they did.

On May 27, 2022, the Tenant (C.L.) spoke with an individual who identified himself as a tenant of the now-former rental unit. The Tenant testified that this individual was not a family member of the Landlord. The Tenants seek compensation because they argue that the Landlord did not occupy the rental unit for the purpose stated in the Notice.

The Landlord did not dispute these facts. He testified that it was always his intent to occupy the rental unit. He further intended to have his parents (who are immigrants from India) live in the duplex next to his, the rental unit. The Landlord explained that his parents, and in particular his father, are traditional Indian parents who expect their son to reside with them and take care of them. However, the Landlord remarked that he basically needed to move out of his parents' home and live by himself with his wife. He thought that by purchasing the duplex this would afford him a hybrid approach.

The Landlord eventually revealed the purchase and his plan to his father who was upset about the Landlord's decision. This occurred in October 2021. Nevertheless, the Landlord proceeded with taking steps to transition out of his parents' home by issuing the Notice. He wanted to prepare his parents for the eventual and planned-for move.

In January of 2022 the Landlord told his father about the move-out, but the father (again, the Landlord reiterated that he was “very traditional”) was worried about who would take care of him. The father is, or was, about 67 or 68 years old at the time of these events.

On March 4, 2022, the Landlord moved into the rental unit. But the pressure and stress caused by his father got to him. He ended up in hospital and dealt with anxiety. That, and he was having to both care for his father and drive his mother around. The Landlord went on medical leave for six months to deal with the anxiety and stress.

Despite the Landlord hoping for an “earlier transition” for his father, the father was “very pushy” and the entire situation was “very hard on me.” The transition apparently did not get any easier for his father, who also experienced an increase in stress. Eventually, after occupying the rental unit for about two months, the Landlord decided to move back in with his parents. The Landlord’s friend then moved into the rental unit.

The Landlord testified that he did not have any conversations with his father about the Landlord’s plans to purchase the property and have them move in next to him. That said, the Landlord also testified that his father’s reaction (when the Landlord eventually revealed his plans to him) was not surprising. The father may have gotten “some hints” that a purchase was in the works, but nothing more.

The Landlord’s sister spoke eloquently about how their father “feels insulted” that the son would want to live separately from his parents.

The Tenant expressed sympathy for the Landlord’s situation and remarked that he never intended to cause any undue stress on the Landlord. However, he added that his family, which included a 2- and a 4-year-old, also experienced significant stress and that they had a “really, really tough time” throughout the experience.

The Law and Analysis

This application for compensation is made under section 51(2) of the Act, which states:

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.

There is no dispute that the rental unit was not occupied by the Landlord for a period of six months. Indeed, the Landlord testified that he only resided in the rental unit for a period of approximately two months. Prima facie, the Landlord is thus required to pay compensation under section 51(2) of the Act.

However, what I must consider is whether the Landlord is excused from paying this amount pursuant to subsection 51(3) of the Act. This section 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.

“Extenuating circumstances” is not defined anywhere in the Act or the regulations. However, *Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy* (pages 5-6, available at <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl50.pdf>) provides the following interpretation of the phrase, by way of examples (emphasis added):

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.

The common element in extenuating circumstances is foreseeability or control, or both.

In the application before me, it was the Landlord who ultimately chose to vacate the rental unit before the six-month period was up. That the Landlord was able to live in the rental unit for approximately two months demonstrates that he was very much capable of occupying the rental unit. And while it is not lost on me that the son-father relationship was a source of significant stress and anxiety, there is no evidence before me to find that the Landlord had no choice but to move back into his parents' home.

What is more, that the Landlord only chose to reveal his purchase of the property and his plans on moving his parents into the adjacent duplex is evidence that the Landlord knew very well what his father's reaction would likely be. Indeed, the Landlord testified that when he did tell his father about his plans, the father's reaction was not surprising.

Yet, the Landlord nevertheless proceeded with purchasing property and ending the Tenants' tenancy knowing full well that his father would put up stiff resistance to any eventual move.

In summary, while it is not lost on me that the Landlord suffered significant anxiety and stress, and while the son must be commended for his devotion to his parents, and in particular his father, the Landlord's decision to move back home is not, I conclude, an extenuating circumstance. For this reason, I find that there existed no extenuating circumstances in section 51(3) of the Act by which to excuse the Landlord from paying the amount required under section 51(2) of the Act.

Pursuant to section 51(2), then, the Landlord must pay the Tenants \$26,400.00.

The Tenants are further entitled to \$100.00 to pay for the cost of their application fee, pursuant to section 72 of the Act.

In total, the Tenants are awarded \$26,500. A monetary order in this amount is issued with this decision to the Tenants. The Tenants must serve a copy of the order upon the Landlord by any method of service permitted under section 88 of the Act.

Conclusion

For the reasons set out above the Tenants' application is hereby granted.

Pursuant to sections 51(2) and 72 of the Act the Tenants are awarded \$26,500.00.

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

Dated: July 5, 2023

Residential Tenancy Branch