



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on June 15, 2023. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- I want compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the Act
- I want compensation for my monetary loss or other money owed, and for the return of part of my security deposit.

The Landlord, and his wife, and the Tenant were at the hearing. All parties provided affirmed testimony. Both parties confirmed receipt of each others evidence and no service issues were raised.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under section 51 of the Act?
- Are the Tenants entitled to compensation for other money owed or for the return of part of the security deposit?

Background and Evidence

Monthly rent was \$2,100.00 at the end of the tenancy. The Tenant received the 2 Month Notice to End Tenancy for Landlord's Use (the Notice) in February of 2022. A copy of the Notice was provided into evidence, and the effective date was May 1, 2022. The Tenant moved out a bit early on April 7, 2022.

The Landlord issued the Notice under the following ground:

- *The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The Tenant is seeking the following items:

- 1) \$25,200.00 – 12 months compensation

The Tenant stated that after he moved out in April of 2022, he moved somewhat close by and kept an eye on the property. The Tenant stated that he saw that the windows/blinds on the property were always closed, and did not appear to be occupied by anyone until November 2022, and even then it only appears to be used for 1-2 months. The Tenant pointed to the utility bills provided by the Landlord and took note of the low consumption from May – December 2022, and stated that he used much more than that when he was living there. The Tenant stated that it appears the Landlord's plan was to have his mother and father-in-law (the in-laws) move into the rental unit to help them out over the summer months, but this would only have been for 2 months.

The Tenant pointed out that there is a lack of photo evidence showing beds and furniture in the rental unit when the Landlord claims his in-laws live there. The Tenant also pointed out that there was no mail delivery for them either.

The Landlord stated that he and his wife were extremely busy. He has a business, and his wife is a student. As a result, the Landlord stated that their plan was to have the in-laws move from Iran to Canada to live in this rental unit so they could be close to the Landlord and their children during this busy time in their lives. The Landlord stated that the mother-in-law was supposed to come on April 17, 2022, and a plane ticket/invoice was provided into evidence. The Landlord stated that the father-in-law had a serious heart issue prior to leaving Iran, and had to receive a stent and surgery, prior to being able to come to Canada, which caused the mother and father-in law to have to re-book their plan tickets to late June 2022. The Landlord provided a copy of the father-in-law's

plan ticket from June 30, 2022, when he was finally able to come with his wife to be in Canada.

The Landlord stated that although their initial move-in was delayed due to the father-in-law's heart issue, both of the in-laws moved in on July 1, 2022, a matter of days after they got to Canada. The Landlord pointed to 3 different letters to support that their parents moved in, one was from the next door neighbour in the townhouse complex where the rental unit is located, the second was from another person in the complex who saw them there, and a third was from the Tenant in the Landlord's property who saw the in-laws helping with the Landlord's kids, and knew that they were living at the rental unit.

The Landlord also provided a signed letter from the in-laws stating that they intended to come to Canada for a couple of years to help with the Landlord's kids. This letter explains that they came to help with the family and were spending their days helping with the Landlord's kids, and would return to the rental unit at the end of the day to sleep. The letter also states that the mother-in-law's sister got colon cancer in September 2022, and the mother-in-law had to go back to Iran at that time to help take care. However, the father-in-law stated that he stayed in Canada, helping with the family and staying in the rental unit, until later in the fall when there was significant political unrest in Iran, which caused him to have to go back to ensure his assets weren't being taken.

The Landlord explained this more in the hearing and stated that the mother-in-law left September 20, 2022, to help care for her sister with colon cancer in Iran. A copy of that ticket was provided into evidence, which shows that this was not pre-planned, and she bought the ticket while she was in Vancouver. The Landlord also pointed out that the father-in-law flew back to Iran in November 2022 after significant anti-government protests were occurring and political unrest began (in September 2022, following the highlight publicized death of an individual in police custody). The Landlord provided a news article citing the unrest and that it started in September 2022, and continued to May 2023. The Landlord stated that the father-in-law felt he had to fly back home because the government had started freezing and confiscating assets. Since all of the father-in-law's retirement assets are in Iran, he felt it necessary to fly back to ensure nothing happened to any of his investments back home. The Landlord stated that the political unrest was significant and "very intense."

The Landlord stated that neither in-laws lived in the rental unit past November 7, 2022, and they did not re-rent the unit until March 2023 until they found out the parents would not be returning soon, due to the issues going on in Iran.

- 2) \$1,149.12 – Moving costs
- 3) \$241.91 – part of security deposit

The Tenant stated that he is seeking the above amounts because he was unlawfully evicted from the rental unit, and he does not feel he should have had to incur these costs. The Tenant provided an invoice for the moving costs.

The Tenant stated that he is also seeking item 3 above because of the unlawful eviction. The Tenant acknowledged that he agreed, at the time of move-out, that the Landlord could retain \$241.91 from his deposit because he did not clean up fully. However, he feels he should get this back because he was unlawfully evicted.

The Landlord pointed out that the Tenant failed to clean up properly and agreed they could retain this amount to help clean up.

Analysis

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or***
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).***

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlords to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice or that they have an extenuating circumstance.

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

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.*

As noted above, and generally speaking, when a tenancy ends by way of a Notice under section 49 of the Act, the onus is on the Landlord to prove that they accomplished the stated purpose on the Notice, otherwise the Landlord may be required to pay compensation pursuant to section 51(2) of the Act, if not excused under section 51(3).

The Landlord selected the following ground:

The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

In this case the Landlord acknowledged that the in-laws only lived in the unit from around July 1, 2022, until November 7, 2022. Since this is less than the required 6 months, I find this is a breach of section 51(2)(b). This typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

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*

I have considered the totality of the situation, including the evidence and testimony, and I note the Landlord's mother-in-law was initially supposed to come to stay in the rental unit around April 17, 2022. However, she had to delay this by a couple of months in order to wait for her husband to undergo an emergency heart procedure in Iran. I note the original ticket was provided, as was the re-booked ticket showing both in-laws arrived in late June/early July 2022. I found the Landlord's explanation on this matter was compelling and supported by some evidence. I accept that this would be a reasonable delay in them moving into the rental property, given the situation.

The Tenant does not believe that the Landlord's in-laws ever moved into the rental property, and he pointed to the fact that the blinds were closed, there was limited utility consumption etc. However, in contrast to this, the Landlord provided letters from 3 individuals who say the in-laws were in Canada, and were residing at the rental unit at the material time. The Landlord also explained that there were only using the rental unit as a place to stay overnight, after caring for the Landlord's kids during the day, which is why the utility bills were so low. I find the Landlord provided a more detailed and compelling version of events, and I find it more likely than not that the mother-in-law lived there from July 2022 until September 2022, and the father-in-law lived there from July 2022 - November 2022. I accept the explanation that the mother-in-law had to go back to help care for her sister in Iran, and I also accept that the father-in-law would have felt compelled to return home, given his wife had to leave, and also given there was significant political unrest, potentially compromising significant family assets.

When viewing the totality of the situation, I find this situation is extenuating such that the issues described would have substantially contributed to the Landlord's in-laws inability to remain living in the rental unit for at least 6 months. Overall, I find the Landlord has sufficiently demonstrated that the circumstances are sufficiently extenuating. Pursuant to section 51(3), I excuse the Landlord from having to pay 12 months compensation for breaching section 51(2).

I dismiss the Tenant's application for this item, in full, without leave.

Next, I turn to Item #2 and #3 of the Tenant's claim. I note the Tenant is seeking for his moving costs to be repaid due to an unlawful eviction. However, I am not satisfied that there is sufficient evidence the eviction was unlawful, such that he ought to be entitled to moving costs. I note the Tenant did not file to dispute the Notice when it was issued, and accepted it at the time. Further, with respect to the tenants request for the cleaning costs (\$241.91) withheld from his deposit to be returned to him, I note he specifically acknowledged that he agreed with the Landlord at the end of the tenancy that they could retain this amount because the unit was not properly cleaned. The Tenant appears to be only seeking this amount because he feels he was unlawfully evicted. However, as noted above, I do not find there is sufficient evidence there was an unlawful eviction. I decline to award either of these amounts.

The Tenant's application is dismissed, in full, without leave.

Conclusion

The Tenant's application is dismissed, in full, without leave.

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: July 5, 2023

Residential Tenancy Branch