



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on November 28, 2022. The Tenant applied for compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 26, 2022 (the Two Month Notice) and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

The Tenant attended the hearing on her own behalf. The Landlord attended the hearing with his spouse, KK, and was represented by legal counsel, MB. All those giving testimony provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on December 3, 2022. MB acknowledged receipt of these documents. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Tenant testified that she served a subsequent evidence package on the Landlord by registered mail on July 24, 2023. MB acknowledged receipt of these documents. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Tenant testified that she served a third evidence package on the Landlord by registered mail on August 7, 2023. MB acknowledged receipt of these documents. However, she submitted that they should not be admitted into evidence because they were not served on time in accordance with Rule of Procedure 3.14. I also note that the text messages contained in the evidence are dated June 4, 2022, and could have been provided with a previous evidence package. Accordingly, I find these documents are excluded from consideration.

During the hearing, the Tenant referred to video evidence. MB submitted that the evidence should not be considered as the Landlord had not been able to view the evidence. MB also stated the Tenant did not confirm the video evidence could be viewed as required by Rule of Procedure 3.10.5. Accordingly, I find the video evidence referred to by the Tenant is excluded from consideration.

The Landlord testified the documentary evidence in response to the application was served on the Tenant by registered mail on received August 4, 2023. The Tenant acknowledged receipt. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The parties were given an 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to compensation from the Landlord?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on January 15, 2020. The Landlord purchased and took possession of the rental property on May 29, 2022. Although the parties agreed the effective date of the Two Month Notice was September 30, 2022, the parties agreed the Tenant vacated the rental unit on or about September 8, 2022. At all material times, rent of \$900.00 per month was due on the first day of each month. A copy of the signed tenancy agreement was submitted into evidence.

The Tenant testified that she received the Two Month Notice on July 26, 2022. The Two Month Notice was issued on the basis that the Landlord's parents will occupy the unit. However, the Tenant asserted that the Landlord did not accomplish the stated purpose for ending the tenancy within a reasonable period and for at least six months after the tenancy ended. The Tenant also claims the Landlord has not acted in good faith.

The Tenant testified she does not believe the Landlord's parents moved in within a reasonable period, or at all. The Tenant submitted that the Landlord's own evidence confirms they have not moved in, although she stated the Landlord's evidence in this regard was "not explicit." The Tenant referred to exhibits submitted by the Landlord which consisted of three medical notes from a doctor in India.

During the hearing, the Tenant referred to conversations with other individuals on the property and with the former occupants of the upper rental unit. However, no written statements were provided, and no witnesses were called to support this testimony. In any event, MB advised the Tenant's former unit has not been rented at any time since the tenancy ended.

The Tenant also testified that a text message from a realtor on August 15, 2022, stated that property was still listed for sale but was being taken off the market. In a letter submitted with the Landlord's evidence, the realtor specified that the Landlord did not intend to sell the rental property if his father's immigration status was confirmed.

The Tenant also submitted photographs of the exterior of the rental property depicting snow on the rental property. Although it appears the path to the front door had been shovelled, it appears a new snowfall had again covered the path. The Tenant noted the lack of footprints in the snow. Additional photographs taken through the windows on that date appears to show very few furnishings in the rental property.

In response, MB confirmed the Landlord's parents did not move into the rental property. She stated the Landlord purchased the rental property so his mother and father would have a place to live once their Permanent Resident status was confirmed. Their status was confirmed in September 2022, at which time they returned to India to obtain their personal effects and to tie up loose ends. Copies of their travel itineraries were submitted into evidence.

However, MB advised that the Landlord's father suffered a mental breakdown while in India. A medical note dated October 18, 2022, stated the Landlord's father suffered "psychological disturbance and depression...[and] a clinical recurrence of nervous breakdown". Symptoms included "palpitation, panic attacks, hopelessness, suicidal thoughts, and decreased confidence." It was recommended that the Landlord's father "avoid travel and remain under my close medical supervision."

Unfortunately, the mental health issues persisted. In a note dated December 28, 2022, the doctor wrote: "He is currently experiencing a nervous breakdown and emotional instability. He has been strictly advised to continue his treatment and stay under observation." Referring to an invoice submitted into evidence dated December 28, 2022, MB indicated that the Landlord's father was hospitalized as a result of his health.

In a more recent medical note dated March 2, 2023, the doctor indicated the Landlord's father was still under treatment but had made improvement.

MB stated that the Landlord's parents are now in Canada and are preparing to move into the rental property. MB submitted the health of the Landlord's father was an extenuating circumstance.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

In this case, pursuant to section 49(3) of the Act, the Two Month Notice was issued on the basis that the Landlord's parents would occupy the rental unit.

Section 51(2) of the Act provides that compensation may be due if the landlord does not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, 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.

In this case, MB confirmed that the Landlord did not use the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. However, section 51(3) of the Act empowers the director to excuse a landlord from the obligation to pay compensation if there are "extenuating circumstances" that stopped the landlord from doing so.

Policy Guideline #50 provides clarification with respect to the meaning of "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.

I find the mental health issues experienced by the Landlord's father constituted extenuating circumstances that excuse the Landlord from paying compensation to the Tenant. To find otherwise would be unreasonable and unjust.

Specifically, I accept that the Landlord issued the Two Month Notice so that his parents could reside at the rental property. I also accept that the Landlord's father suffered significant mental health issues during a trip to India and that he was advised to avoid travel and obtain treatment, which he did. I also find there is insufficient evidence before me to conclude the Landlord re-rented the Tenant's former rental unit or that the rental property has been listed for sale. Indeed, I accept the advice of MB that the rental unit has remained vacant but that the Landlord's parents are in Canada and intend to move in.

Considering the above, I find the Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed 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: August 18, 2023

Residential Tenancy Branch