

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- compensation of \$29,376.00 due to the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51(2) of the Act; and
- authorization to recover the filing fee for this application from the Landlord under section 72(1) of the Act.

The Tenant, the Tenant's spouse MY, the Landlord, the Landlord's spouse IL, and the Landlord's legal counsel RJ attended this hearing.

### **Preliminary Matters**

#### **Removal of Applicants**

This application initially named the Tenant's spouse and two other members of the Tenant's family as co-tenants and co-applicants. However, based on the tenancy agreement submitted, I find that only the Tenant had entered into the tenancy agreement with the Landlord as a tenant, and therefore has standing to make this application. I find the other members of the Tenant's family were occupants as specified in section 20 of the parties' tenancy agreement addendum. Therefore, pursuant to section 64(3)(c) of the Act, I have amended this application to remove the other applicants.

#### **Service of Notice of Dispute Resolution Proceeding Package and Evidence**

The Landlord confirmed receipt of the Tenant's notice of dispute resolution proceeding package and evidence.

The Landlord submitted four registered mail receipts (showing the Tenant's address) with tracking numbers (referenced on the cover page), as proof of service of his evidence package on each of the Tenant and the other applicants. Online tracking records show that the packages were sent on October 4, 2024, and notice cards indicating where and when to pick up the packages were left on October 7, 2024.

According to the Tenant and MY, they have a concierge for receiving mail and were checking their mailbox, but they did not see any notice from Canada Post.

Based on the Landlord's proof of registered mail service, I find the Tenant was served with the Landlord's evidence package in accordance with section 88(c) of the Act. Pursuant to section 90(a) of the Act, I find the Tenant is deemed to have received the Landlord's evidence package on October 9, 2024, the fifth day after mailing. I find the Landlord complied with the service deadline required under Rule 3.15 of the Rules of Procedure.

A copy of the Landlord's evidence package was emailed to the Tenant and MY during the hearing. The Tenant and MY reviewed and responded to the Landlord's evidence. At the end of the hearing, the Tenant and MY confirmed that they did not need more time to review or respond to the Landlord's evidence.

### **Issues to be Decided**

Is the Tenant entitled to compensation under section 51(2) of the Act?

Is the Tenant entitled to recover the filing fee?

### **Background and Evidence**

I have reviewed all the evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The rental unit is a two-bedroom apartment. This tenancy commenced on January 1, 2020.

In June 2023, the Landlord issued the Tenant a two month notice to end tenancy for landlord's use of property dated June 7, 2023, with an effective date of August 31, 2023 (the "Two Month Notice"). The stated reason for ending the tenancy was that the rental unit will be occupied by the "landlord or the landlord's spouse".

The Tenant vacated the rental unit by July 20, 2023. At the time that the tenancy ended, rent was \$2,448.00 due on first day of each month.

The Landlord submits as follows:

- The Landlord is the sole owner of the rental unit.
- In early 2023, the Landlord had detailed discussions with his brother, who lives near the rental unit, regarding their parents' declining health. After these discussions, the Landlord decided to move into the rental unit from abroad, and relocate his parents, who were living in another country, to live there with him.

- In April 2023, the Landlord resigned from his job with the intent to move into the rental unit with his spouse by September 2023. On June 7, 2023, the Landlord's agent served the Two Month Notice on the Tenant.
- On July 23, 2023, the Landlord's father-in-law passed away unexpectedly due to a stroke. His sudden death had a devastating effect on the Landlord's mother-in-law. Her emotional and physical health declined significantly, worsened by pre-existing early-stage dementia. The Landlord and his spouse decided to stay put to provide care and emotional support for her.
- During the same period, the Landlord's father experienced a significant deterioration of his health. The Landlord's father suffered several falls between June and August 2023, affecting his ability to travel long distances. It became evident that moving him to the dispute city was no longer feasible.
- As a result, the Landlord and his spouse were forced to abandon their plan to relocate the Landlord's parents. The Landlord visited his father in September 2023 to assist in his care, and visited him again in February and August 2024 for extended stays.
- The rental unit has remained vacant since the Tenant moved out. The Landlord has neither re-rented it nor listed it for sale.
- The Landlord acted in good faith when issuing the Two Month Notice. Given the unforeseen family tragedy and health crises, the Landlord was unable to occupy the rental unit as intended within the timeline originally set out. These extenuating circumstances, supported by witness statements and medical evidence, should excuse the Landlord from the Tenant's claim for compensation.

The Tenant submits as follows:

- The Landlord admitted that they did not occupy the unit. All of the Tenant's evidence is that the Landlord did not and is not occupying the unit.
- The Tenant is sorry for the Landlord's loss. The Landlord could have let the Tenant know and offered for the Tenant to move back in at the same rent, instead of leaving the unit vacant. The Tenant is paying 1.5 times more in rent, since rent has gone up a lot in the area. This caused a big impact for the Tenant financially.
- The Tenant previously tried to contact the Landlord through the Landlord's agent, but was told that the agent would not disclose the Landlord's contact. The Tenant felt that the Landlord was avoiding the Tenant and the situation.
- In December 2023, the Tenant found a slip addressed to the rental unit under a different name.
- According to the Tenant's former neighbour, the parking stall previously used by the Tenant was vacant until September 2023, when a vehicle took up the spot. The vehicle has not been moved since.

In reply, the Landlord submits as follows:

- The Tenant already moved out by the time that the Landlord's father-in-law passed away. The Landlord had not abandoned the original plan at that time. The Landlord was in a difficult position and was trying to focus on his family.
- The Landlord's brother and sister-in-law take care of the rental unit for him. The vehicle seen by the neighbour is the Landlord's sister-in-law's spare vehicle, so it is just parked there. The slip mentioned by the Tenant was for the Landlord's sister-in-law's relative, who used the rental unit as a mailing address.

## **Analysis**

### **Is the Tenant entitled to compensation under section 51(2) of the Act?**

I find this tenancy ended pursuant to the Two Month Notice, a notice to end tenancy given under section 49(3) of the Act.

Section 49(3) of the Act permits a landlord who is an individual to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

In this application, the Tenant seeks compensation of 12 months' rent under section 51(2) of the Act, which read at the time:

#### **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 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.

The onus is on the landlord to prove that they accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date, and for a notice given prior to April 3, 2024, that they used the rental unit for the stated purpose for at least 6 months.

In this case, I find it is undisputed that the rental unit was not occupied after the Tenant moved out. As such, I find the stated purpose of the Two Month Notice was not

accomplished within a reasonable period after August 31, 2023, and the rental unit was not used for the stated purpose for at least 6 months.

Under section 51(3) of the Act as it then read, a landlord may be excused from paying compensation to the tenant if there were “extenuating circumstances”, as follows:

(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 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.

Residential Tenancy Policy Guideline 50. Compensation for Ending a Tenancy describes “extenuating circumstances” as 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.

Based on the evidence presented, I find there were extenuating circumstances that prevented the Landlord and his spouse from occupying the rental unit as planned.

I find the passing of the Landlord’s father-in-law on July 23, 2023 was sudden and unexpected. The Landlord provided a copy of his father-in-law’s death certificate, as well as hospital records indicating that his father-in-law was well until being admitted to the hospital for four days on June 15, 2023. The Landlord also submitted a physician’s note confirming his mother-in-law’s health condition. I accept that the Landlord and his spouse were unable to travel as planned, due to having to take care of the Landlord’s mother-in-law after the Landlord’s father-in-law’s sudden passing.

Additionally, the Landlord provided medical records and statements from his family members to explain his father’s health situation. I accept that it was also due to a decline in the Landlord’s father’s health that the plan for relocation had to be put off.

I am satisfied that these matters were largely unanticipated and were outside of the Landlord’s reasonable control, which have prevented the Landlord from accomplishing the stated purpose of the Two Month Notice. As such, I find that it would be unreasonable and unjust to require the Landlord to pay compensation to the Tenant.

I find the Landlord is excused from paying compensation to the Tenant under section 51(3) of the Act. I dismiss the Tenant’s claim for compensation without leave to re-apply.

### **Is the Tenant entitled to recover the filing fee?**

As Tenant has not been successful in this application, I find the Tenant is not entitled to recover the filing fee from the Landlord under section 72(1) of the Act.

### **Conclusion**

The Tenant's application is dismissed in its entirety without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 16, 2024