



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlords for the cost of the application.

The landlords both attended the hearing, but did not testify and were represented by an agent. The tenant and the landlords' agent gave affirmed testimony, and agreed that all evidentiary material has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the landlords' failure to use the rental unit for the purpose contained in a 2 Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The tenant testified that the tenancy originally began on November 13, 2009 when the tenant resided in the "accessory building" but was required to move out due to a by-law, and moved into a basement suite of the rental house commencing July 1, 2010. The parties had no written tenancy agreement for the first several years, however a written agreement was signed by the parties on November 1, 2015 for a tenancy to commence on a month-to-month basis on November 1, 2015. A copy has been provided, and it states that rent in the amount of \$860.00 per month is payable. The date in the month rent is payable is left blank, but the tenant testified he paid rent at the beginning of each month. The tenant further testified that on November 13, 2009 the landlords collected a

security deposit from the tenant in the amount of \$350.00 which was returned in full after the tenancy ended.

The landlords served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property personally on January 22, 2016 and a copy has been provided for this hearing. It is date January 22, 2016 and contains an effective date of vacancy of April 1, 2016. The reason for ending the tenancy states: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." The tenant moved out on March 12, 2016 and did not pay rent for the last month of the tenancy.

The tenant further testified that he drives by the rental unit daily from his new home to work. There are no vehicles or any people on the property. The landlords do not reside there. Today the tenant went by and there are kids and a family living there and it appears they are living in the entire house. The tenant also knows the neighbour personally, and they hang out together and the neighbour keeps an eye on the rental property to see if the landlord is being honest. The landlord's sister is living there while going to school, as indicated in the landlord's evidentiary material, referring to a type-written chronological sequence of events, marked "Evidence submission for hearing March 2, 2016. It states that the rental unit sat vacant from March 12 to May 15, requiring extensive work and the contractor was not able to start until the middle of May, 2016. It also states that while the landlords were out of country for vacation from June 5 to August 1, 2016 the landlord's sister stayed upstairs and did not pay rent. As of September 6, 2016 the sister started school and lives in the basement unit, and the basement unit has not been re-rented and still needs some work.

Further, the landlords have a very nice home aside from the rental home, and it's noticeable that they have not left that home to live in the basement suite.

The landlord's agent testified that the basement suite has not been rented out, but is being renovated. Contractors for the landlords live in a different community and stay at the rental home. The owners don't need to rent it out for money. A sister of one of the landlords was permitted to stay there to look after the house and another house belonging to the landlords around the corner. There is a doorway from the upper level of the rental home to the basement suite and the landlord's sister stays upstairs. The basement is still vacant.

When asked about little kids' shoes in the basement suite today, the landlord's agent submits that what is the case today is not relevant. After September, the landlords can rent it out if they choose.

Analysis

The *Residential Tenancy Act* states that a landlord may end a tenancy if the landlord has good faith intent to use the rental unit for the purpose contained in the 2 Month Notice to End Tenancy for Landlord's Use of Property. If the landlord fails to use the rental unit for that purpose commencing with a reasonable time after the end of the tenancy or fails to use it for that purpose for at least 6 months, the landlord must pay compensation to the tenant in the sum of double the monthly rent.

In this case, the landlords do not deny that they have not moved into it, despite the fact that the reason for issuing the notice is, "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." A landlord may not end a tenancy for a sister of the landlord to reside in the rental unit, whether or not the sister pays rent to the landlord.

I also consider that the notice to end the tenancy was effective April 1, 2016. The landlord's agent testified that the rental unit and upper level need renovations which have been on-going, but the rental unit sat vacant from March 12 to May 15, and the contractor was not able to start until the middle of May, 2016. The landlords were out of country for vacation from June 5 to August 1, 2016 the landlord's sister stayed upstairs and did not pay rent. As of September 6, 2016 the sister started school and lives in the basement unit. I disagree with the landlords' agent that after September the landlord can rent it out and that today is not relevant. I am satisfied that the tenant has established that the landlords have not used the rental unit for the purpose contained in the notice to end the tenancy commencing with a reasonable time after the end of the tenancy, and has established that the landlords have no intention of doing so.

I find that the tenant has established a claim for double the monthly rent, or \$1,720.00.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order I favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,820.00.

This order is final and binding and may be enforced.

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: March 17, 2017

Residential Tenancy Branch