Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant sought compensation under sections 51 and 67 of the Act.

A dispute resolution hearing was convened, and the landlord's agent (the "agent") and the tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issue of this application are considered in my decision.

Issue to be Decided

Is the tenant entitled to compensation under sections 51 and 67 of the Act?

Background and Evidence

The tenant testified that the tenancy commenced in January of 2012 and ended when she vacated the rental unit on July 30, 2018. Monthly rent was $665.00, and she paid a security deposit. There was no written tenancy agreement submitted into evidence.

On May 15, 2018, the landlords issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), with an effective date of August 1, 2018. The

Notice was served by being taped on the tenant's door on May 15. The tenant did not submit a copy of the Notice into evidence but read me the information from a screen shot on her phone. Page 2 of the Notice did not indicate the specific reason for the tenancy being ended, but on or about June 3, 2018, the tenant was given a letter from the landlords' son in which he stated his and his family's intention to use the rental unit. A copy of the letter was submitted into evidence.

Shortly after moving out, the tenant reported some construction work that the landlords had done, to the municipal bylaw office. She also wanted the bylaw officers to inspect the rental unit, as she felt that the landlords had simply wanted to kick her out and that they "never intended to live there [in the rental unit]." In conversations with the bylaw officer, the tenant said that the officer observed clothes in a pile on a bedsheet in the living room. This was in October 2018. Copies of the bylaw officer's reports were submitted into evidence. An entry from October 16, 2018, indicates that the officer observed the rental unit and that the family appeared to be occupying it, and that the rental unit was unlocked and accessible from the main house.

The agent testified that the tenant's testimony consists of "false accusations" and that she, her husband (the landlord's son), and their daughter have been using the rental unit since August 1, 2018, the day after the tenant vacated. They use the rental unit as a playroom, and they use the kitchen for various things. They have never rented the rental unit out to anyone. She commented that "we can put whatever we want into it [the rental unit]."

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, the tenant seeks compensation under section 51 of the Act. This section reads as follows (as it was then in force on May 15, 2018):

> (2) In addition to the amount payable under subsection (1), if
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> > (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

> (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
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> the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The stated purpose for ending the tenancy, though not indicated on the Notice, was clarified in the letter dated June 3, 2018. And, this purpose was that which is set out in section 49(3) of the Act: "A landlord who is an individual may 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." Further, a "close family member" includes a son or daughter of the landlord, or son-in-law or daughter-in-law of the landlord, and the child of the son or daughter (or child of the son-in-law or daughter-in-law).

"Occupy" is the verb form of the noun "occupancy," which is defined in law as "the act, state, or condition of holding, possessing, or residing in or on something; actual possession, residence, or tenancy" or "the use to which property is put" (Black's Law Dictionary, 7th ed.). In other words, occupancy does *not* mean to live in, in the sense of someone sleeping, eating, making meals, getting ready for work, and watching TV, and all of the ordinary daily activities that we do while living in a home. Under the Act, a landlord need only occupy the rental unit for a purpose, *any* purpose, insofar as it complies with the Act. (That is, versus renting the rental unit out to new tenants, for example.)

In this case, the landlords' close family members appear to be using the rental unit as additional living space within the larger home. They use it as a playroom, or a place to make extra meals in the kitchen, or as a laundry-sorting room as evidenced by the pile of clothes on the floor. The bylaw officer's report of October 16, 2018, substantiates the agent's claim that they are occupying the rental unit.

There is no evidence before me to suggest that the landlords or their close family members are not occupying the rental unit as is meant by the word "occupy." That they do not occupy it in the sense of always living in the rental unit is irrelevant. And there is no evidence that the landlords or their close family members have done anything with the rental unit in contravention of the Act or inconsistent with the stated purpose for ending the tenancy.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim for compensation under section 51 of the Act.

Conclusion

I hereby dismiss the tenant's application 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 Act.

Dated: February 13, 2019

Residential Tenancy Branch