



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenants' application. As the tenants confirmed receipt of the landlord's evidentiary materials, I find that the tenants were duly served with the landlord's evidence.

The tenants submitted photos in their evidentiary materials of the exterior of the home, which the landlord testified to not receiving. The tenant took no issue with the exclusion of this evidence.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlord's failure to use the rental unit for the purpose stated in the notice to end tenancy (i.e., landlord's use of property)?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on June 1, 2014. Monthly rent was set at \$1,490.00, payable in advance on the first of each month. The tenants received their security deposit back on June 4, 2018, along with compensation for one month's rent in satisfaction of the requirements of the 2 Month Notice served to them on April 3, 2018.

It was undisputed by both parties that the tenants moved out on June 1, 2018 as per the 2 Month Notice issued to them by the landlord. The landlord stated on the 2 Month Notice the following reason for ending the tenancy: "The Landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant."

The tenants are seeking compensation as they have driven past the home and noticed that the home is still standing, and the condition of the home looks the same, including a broken window in the back.

The landlord testified that the home remains vacant and un-rented. The landlord testified that he still is in the process of demolishing the home as indicated by the building permits dated February 9, 2018, which were obtained before he had issued the 2 Month Notice to the tenants,. The landlord testified that there have been substantial delays due to deficiencies identified by the municipality that needed to be addressed. The landlord provided detailed evidence to support that he did have all the necessary permits and approvals as required by law before serving the tenants with the 2 Month Notice, and that the 2 Month Notice was issued in good faith.

Analysis

Section 51(2) of the *Act* reads in part as follows:

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.

I have considered the testimony and evidence of both parties, and I find that the landlord provided sufficient evidence to support that he has been compliant with section 49(3) of the *Act*. The landlord provided detailed evidence to show that he ended the tenancy for the stated purpose on the 2 Month Notice, and although not obvious, the landlord has followed through with his intentions. I am satisfied that the landlord has obtained all the necessary approvals and permits to demolish the home, and has taken all reasonable steps to follow through with the project, but has been delayed by circumstances beyond his control.

Accordingly, I dismiss the tenants' application for monetary compensation as I find that the landlord has complied with the *Act*.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were not successful with their application, they must bear the cost of this filing fee.

Conclusion

The tenants' entire 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: April 9, 2019

Residential Tenancy Branch