



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,

AK, counsel for the landlords, represented the landlords in this hearing. 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 landlords 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 all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the landlords' 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 month-to-month tenancy began on March 1, 2017. Monthly rent was set at \$1,560.00 at the end of this tenancy, which ended on July 16, 2018 after the tenants were issued a 2 Month Notice to End Tenancy for Landlord's Use on June 26, 2018.

The landlords issued the 2 Month Notice in order for their son to occupy the carriage home on the property. The son was graduating from secondary school, and would be commencing his post-secondary education at the University nearby. The landlord BH testified in the hearing that his son wanted to move in with his friends, but the landlord was concerned about an 18 year old living on his own. The landlords had decided the better decision would be to offer the son the carriage home so he could focus on school without having to worry about rent. Once this decision was confirmed, the landlords gave notice on June 26, 2018 to the tenants in order to have vacant possession so their son could move in. The effective date was set for August 31, 2018, with an earlier move out date arranged for July 16, 2018. The son moved in the first week of August 2018, which included moving in all his personal effects such as his television, video console system, bedding, and clothing.

The landlords called several witnesses in the hearing confirming that the son had indeed moved into the carriage home. The landlords' witnesses testified that they had seen the son and his friends playing hockey outside and the son's car parked inside the garage in October and November of 2018, as well as February 2019. DL testified in the hearing that his son as a long-time friend of the landlords' son, and his son would often be over. DL recalled a specific incident on December 7, 2018 when his son had an accident at the carriage home, and he had to attend the home to pick up his son. He testified that he had attended the carriage home often, including through the winter and through to March of 2019. BC testified in the hearing that he was friends with the landlords, and had done work in the carriage home. BC testified that he had attended the home to do some repairs, and observed clothing and shoes that belonged to a young man. DW also testified that he had attended the home, and had assisted in 2018 after the son had backed his car into the garage wall.

The son testified in the hearing, and testified that he had lived there from August 2018 through to April 2019, and was frequently away from the home as he worked shift work at a fast food restaurant while playing sports such as hockey, basketball, and working out at the gym. The landlords do not dispute that the son moved out of the carriage home in April 2019 due to the fact that the landlords' discontent with their son's partying.

The landlords had deemed their son too immature to handle the independence that he was given, and the son moved back into the family home. The landlords also submitted photos of a shovelled driveway during the snowfall as well as a text message from November 2018 from the landlord to her son about blankets. The landlords feel that they had issued the 2 Month Notice in good faith, and fulfilled their obligations under the *Act*.

The tenants are applying for compensation as allowed under the *Act* as they feel that they had moved out pursuant to the 2 Month Notice, and they feel that there is evidence to show that the landlords did not use the carriage home as stated on the 2 Month Notice. On April 11, 2019, the tenants discovered an online posting advertising the carriage home for rent in the amount of \$1,800.00. A copy of this posting was included in the tenants' evidence package. The tenants testified that they have also driven by and observed the home to be empty as the hedges were bare in the winter, and they could see through them. Furthermore, the tenants feel that the hydro usage reflects a vacant home as it should be a lot higher.

The landlords responded to the tenants claims about the hydro usage, stating that their son was hardly ever home. The landlords also feel the previous usage also reflects the fact that the tenants had operated an auto repair business out of the garage where power tools were used. The landlords feel that one cannot draw a conclusion based on hydro usage or observation, as the home may still be occupied but may appear otherwise.

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.

Residential Tenancy Policy Guideline #2A provides more clarity about the requirements of section 49 of the Act when ending a tenancy for landlord's use.

Vacant possession

*Other definitions of "occupy" such as "to hold and keep for use" (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (**see Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.*

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

I have considered the testimony and evidence of both parties, and I find the landlords had provided substantial evidence in support of the fact that their son had occupied the home from August of 2018 to April of 2019. Although the tenants and other parties may have observed the home to be empty, and although the hydro usage may be unusually low compared to the average, I find that one cannot conclusively determine the

occupancy or vacancy of a home from these two criteria. I find that the landlords had produced evidence that supports their testimony that the 2 Month Notice was served in June of 2018, which coincided with the son's transition from graduating secondary school to attending his first year of university. I find the testimony of the witnesses to be credible. The landlords did not dispute the fact that they had posted the home for rent in April of 2019, 8 months after the effective date of the 2 Month Notice. I accept the landlords' testimony of how the son had moved back home with his parents in April of 2019 due to their concerns of the son's ability to live alone at such a young age. Based on the evidence before me, I find that the son had in fact occupied the home for a duration of at least 6 months, which meets the requirement of section 51(2) the *Act*. As I find the landlords had provided sufficient evidence to show their compliance with the *Act*, I dismiss the tenants' entire application without leave to reapply.

Conclusion

The tenants' 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: July 18, 2019

Residential Tenancy Branch