



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, FFT

Introduction

This hearing was convened in response to an Application for Dispute Resolution in which the Applicant applied for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), Regulation or tenancy agreement and to recover the fee for filing this Application for Dispute Resolution.

The Applicant stated that on May 03, 2019 the Dispute Resolution Package was sent to the Respondents, via registered mail. The Respondents acknowledged receipt of the Dispute Resolution Package.

On April 26, 2019 the Applicant submitted evidence to the Residential Tenancy Branch. On May 24, 2019 the Applicant submitted a duplicate package of this evidence, with the exception of the fact she numbered the pages of the second submission. She stated that the numbered evidence package was served to the Respondent with the Dispute Resolution Package. The Respondents acknowledged receiving the numbered evidence and it was accepted as evidence for these proceedings.

On July 02, 2019 the Respondent submitted evidence to the Residential Tenancy Branch. The female Respondent stated that this evidence was served to the Applicant, via registered mail, on July 02, 2019. The Applicant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Is the Applicant entitled to compensation, pursuant to section 51(2) of the *Act*, because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Applicant stated that:

- this tenancy began on December 01, 2015;
- she vacated the rental unit on November 15, 2018;
- her rent, at the end of the tenancy, was \$1,580.00;
- on October 04, 2018 her landlord served her with a Two Month Notice to End Tenancy for Landlord Use of Property;
- the Notice declared that she must vacate the unit by December 04, 2018; and
- the Notice declared that the tenancy was ending because all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this notice because the purchaser or a close family member intend in good faith to occupy the unit.

The Respondents did not dispute any of the aforementioned information.

The female Respondent stated that:

- they purchased the rental unit on September 23, 2019;
- they signed a Buyers Notice to Seller for Vacant Property in which the Respondents asked the Applicant's landlord to give the Applicant a Notice to End Tenancy because the Respondents intended to live in the rental unit;
- the Respondents moved into the rental unit and currently use it as their primary residence;
- the Respondents periodically rent the unit through a popular short term rental site in an effort to generate income;
- they rent the unit on a short term basis when she is working night shift or when they are away on holidays;
- the male Respondent stays with his parents when the unit is rented and the female Respondent is working a night shift;
- she initially estimated that in the past 8 months the unit has been rented approximately 8 times, for various periods of time;
- the short term rental website is managed by a friend so she is not certain of the number of times the rental unit was rented on a short term basis;
- the last time she checked the website there were 39 reviews of the unit, which caused her to conclude that the rental unit was actually rented, on a short term basis, at least 39 times;

- the longest rental period was for 2 weeks, during which time the Respondents were away on holidays; and
- often the rental unit is rented for only one night, as they live near a large arena and are able to rent it to people who are attending a single event.

The Applicant stated that she has discovered that the rental unit is being advertised on a popular short term rental site. She stated that she logged into that site and determined that there was only one date available for rent in July of 2019 and that all the other days in July of 2019 were listed as unavailable. She stated that the last time she checked the site she found 29 reviews for the rental unit.

The female Respondent stated that:

- the rental unit was available for short term rental in July of 2019 for the period between July 14, 2019 and July 20, 2019;
- in July of 2019 the unit was rented to a third party for the period between July 14, 2019 and July 20, 2019; and
- the other dates in July of 2019 were not available for rent as they were living in the rental unit on the other dates.

Analysis

On the basis of the undisputed evidence I find that the Tenant was served with a Two Month Notice to End Tenancy for Landlord Use of Property, which declared that the rental unit must be vacated by December 04, 2018.

On the basis of the undisputed evidence I find that this Notice to End Tenancy was served because all of the conditions for the sale of the rental unit had been satisfied and the Respondents had asked the Tenant's landlord, in writing, to give the notice because they intended to occupy the unit.

On the basis of the undisputed evidence and the lack of any evidence to establish that the Respondents are living at a different address, I find that the Respondents moved into the rental unit after they purchased it and they are currently using it as their primary residence.

On the basis of the undisputed evidence I find that the Respondents have also been renting the rental unit to short term renters through a popular on-line short-term rental service. The advertisement submitted in evidence indicates that the unit was initially placed on the popular web-site in January of 2019.

On the basis of the testimony of the female Respondent I accept that the rental unit is rented on a short-term basis when the Respondents are on holidays or when the female Respondent is working nightshift, at which time the male Respondent stays with his parents.

On the basis of the testimony of the female Respondent, I find that the rental unit has been reviewed on this short-term rental site on 39 occasions. I therefore find it is reasonable to conclude that this rental unit has been rented, on a short-term basis, 39 times since it was advertised in January of 2019.

Assuming the rental unit was only rented for one night on each of those 39 times, I would calculate that the unit was rented to various third parties for 18.5 percent of the time between January 01, 2019 and July 30, 2019. It is clear that the true percentage of rental time would be somewhat greater than 18.5 percent, as the female Respondent acknowledged renting the unit for a two week period while they were out of the country.

In adjudicating this matter I have placed little weight on the Applicant's testimony that she logged into the short-term rental site and determined that there was only one date available for rent in July of 2019 and that all the other days in July of 2019 were listed as unavailable. I have placed little weight on this testimony because it does not establish that the rental unit was rented on a short-term basis for 30 days in July.

I find that the female Respondent's testimony that the rental unit was only available for short term rental in July of 2019 for the period between July 14, 2019 and July 20, 2019 and that the other dates in July of 2019 were not available for rent because the Respondents were living in the rental unit on the other dates was credible. As people who advertise the rental unit on this short-term site have the ability to "block out" dates that the rental unit is not available for rent, I find it reasonable to conclude that the rental unit was not available for rent for most of July because the Respondents were living in it for most of July. I find that the female Respondent has adequately explained why the rental site indicated that the unit was not available for most of July.

Section 51(2)(a) of the *Act* stipulates that if steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

As the Applicant's tenancy was ended because the Respondent's purchased the rental unit and intended to move into it and the Respondents are currently using it for their primary residence, I find that the penalty imposed by section 51(2)(a) of the *Act* does not apply. I therefore dismiss the application for compensation pursuant to section 51(2)(a) of the *Act*.

There is nothing in the legislation that prevents a new purchaser from using their primary home for a secondary purpose, such as a home business. In these circumstances, where the Respondents are periodically allowing third parties to use their primary residence when the residence is not being fully used because of holidays or work schedules and they are using the unit for their primary residence the majority of the time, I find that they have complied with the spirit of the legislation.

I find that the Applicant has failed to establish the merit of her Application for Dispute Resolution and I dismiss her application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The application for a monetary Order 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: August 01, 2019

Residential Tenancy Branch