



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

Introduction

This hearing addressed the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order as compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both tenants, the landlords and counsel for the landlords, S.S. attended the hearing. All parties present were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlords called one witness, J.P. who attended the proceeding.

The landlords confirmed receipt of the tenants' application for dispute resolution and evidentiary package, while the tenants' confirmed receipt of the landlords' evidentiary package. All parties are found to have been served in accordance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award?

Can the tenants recover the filing fee?

Background and Evidence

The tenants provided undisputed testimony that this tenancy began in August 2011 and ended on March 31, 2019, following the issuance of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on February 27, 2019. The tenants confirmed their monthly rent at the end of the tenancy was \$1,835.20 and that their security deposit was returned in its entirety.

The tenants are seeking a monetary award of \$22,122.40 pursuant to section 51(2) of the *Act* which provides for tenants to receive the equivalent of twelve months rent compensation should the property not be used for the reasons cited on the Notice to End Tenancy.

During the hearing both parties agreed that the tenants had been issued a 2 Month Notice to End Tenancy on February 27, 2019 for Landlord's Use of Property. The reason cited on the notice was listed as, 'All 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 intends in good faith to occupy the rental unit.'

The tenants argued that the landlords had failed to use the property in accordance with the Notice served on them. They testified that the property had been renovated, split into two separate suites and re-rented. Tenant N.H. explained a girlfriend had toured the property on approximately May 18, 2019 during a showing for potential tenants. N.H. said her girlfriend had seen two suites for offer during this tour. Furthermore, the tenants alleged they had seen a Craigslist advertisement listing the home as being offered as two separate rental units (when it was formerly one unit) and they supplied a video which purported to show a separate kitchen in a downstairs "rental" suite.

The landlords acknowledged the unit was re-rented on July 1, 2019 for \$2,800.00 per month but they disputed the tenants' argument that the home was split into two separate rental units. As part of their evidentiary package, the landlords submitted a copy of the a new tenancy agreement signed July 1, 2019 which displayed only one unit for rent. The landlords confirmed that some renovations had been done on the property, but they maintained the alleged downstairs "rental" unit had simply been updated with new cupboards and cabinets and did not contain any appliances. They maintained the home was re-rented on July 1, 2019 as one rental home.

The landlords sought to have section 51(3) of the *Act* invoked to excuse them from having to pay compensation. They stated that the purchaser of their home had reneged on their sale after having completed the sales documents and provided them with a

deposit. Section 51(3) of the *Act* states, a landlord may be excused from paying compensation if extenuating circumstances prevent a landlord 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.

The landlords highlighted that steps had been initiated in January 2019 to sell their home. They said an offer was accepted on February 21, 2019 and an inspection of the property was performed on February 26, 2019. On February 27, 2019 subjects to sale were removed, thus the 2 Month Notice was issued to the tenants following instructions from the new purchaser. As part of their evidentiary package the landlords submitted a copy of the Contract of Purchase and Sale which showed a contract for the sale of the property in question was signed on February 21, 2019 between the landlords and buyer J.S.S. This contract showed the purchase price and a deposit of \$15,000.00 which was paid within 24 hours of subject removal. Additionally, they included a copy of the inspection report completed February 26, 2019 and a Removal of "Subject to Clause" and Appointment of Conveyancer document dated February 27, 2019.

The landlords explained that on May 2, 2019 they were contacted by the purchaser J.S.S. who sought to void the purchase. In a letter entered into evidence by the landlords, purchaser J.S.S. wrote, "I beg you to please consider voiding our purchase. We cannot financially support this purchase anymore, and hope you can consider this on compassionate grounds." The landlords called their real estate agent, J.P. as a witness. J.P. explained that the property was not re-listed due to a drop in the property market, though J.P. did not rule out the possibility of re-listing it in the Spring of 2020 if the housing market approves, noting that the current tenancy agreement was set to expire in December 2019.

Analysis

Section 51(2) of the *Act* states, "if the landlord or, if applicable, the purchase who asked the landlord to give the notice must pay the tenant...an amount that is 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 with a reasonable period after the effective date of the notice."

After having considered the testimony of both parties and following a close review of all evidentiary documents submitted by both parties, I find the landlords provided detailed evidence explaining why they could not complete the sale of the property and therefore should be excused from paying the 12 months compensation as per section 51(3) of the *Act*.

This section states, "The director may excuse the landlord from paying the tenant the amount required if, in the director's opinion, extenuating circumstances prevented the landlord 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 #50 states, "An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit." While no definitive list is presented in this Policy Guideline, I find the landlords evidence persuasive that they were stopped from accomplishing the purpose related to the issuance of the 2 Month Notice.

The tenants presented a significant number of submissions and evidence related to the fact that the property was renovated and re-rented following the issuance of the 2 Month Notice. While I take note of this argument, I accept the landlords' evidence that all steps had been taken to execute a sale of the property as detailed during the hearing. I find the landlords presented a significant amount of evidence that this sale was genuine and fell through because the purchasers suffered an unexpected set back. This was a true detriment to the landlords because they lost an advantageous sale and could not expect to get another in the current housing market. This evidence supported the landlords' and their real estate agent's testimony that the buyers reneged on the sale through no fault of the seller. I therefore find the landlords are entitled to be excused from paying 12 month's compensation pursuant to section 51(3) of the *Act*.

For these reasons, I dismiss the tenants' application without leave to reapply. As the tenants were unsuccessful in their application they must bear the cost of their own filing fee.

Conclusion

The tenants' application is dismissed without leave to reapply.

The tenants must bear the cost of their own filing fee.

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: October 1, 2019

Residential Tenancy Branch