



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FFT

Introduction

On August 7, 2019, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement, and to recover the cost of the filing fee.

The Tenants and Landlord were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss?

Background and Evidence

The parties testified that the tenancy began on November 1, 2014 and continued on a month to month basis. Rent in the amount of \$2,592.50 was due by the first day of each month. The Tenants paid a security deposit of \$1,250.00 to the Landlord and a pet damage deposit of \$100.00.

The Tenants testified that they received a Two Month Notice To End Tenancy For Landlord's Use Of Property from the Landlord on January 29, 2019. The parties testified that the Tenants moved out of the rental unit on March 31, 2019.

Compensation for Breach of Section 51 of the Act

The Tenants received a Two Month Notice from the Landlord dated January 23, 2019. The Tenants testified that they accepted the Two Month Notice and moved out of the rental unit on March 31, 2019. The reason for ending the tenancy within the Two Month Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individuals spouse).

The Tenants are seeking compensation in the amount of \$31,110.00 from the Landlords because they submit that the rental unit was not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Tenants testified that after they vacated the rental unit they periodically drove by the rental property and noted that nobody had moved in. The Tenant testified that on May 19, 2019 he noticed that somebody had moved into the unit and he discovered that it was the Landlords' son. The Tenant testified that the Landlord had previously stated that it would be the Landlords moving into the unit themselves.

The Tenants testified that the Landlords were being deceptive.

In reply, the Landlords provided testimony confirming that they issued the Two Month Notice and that they had told the Tenants that they would be moving into the rental unit themselves.

The Landlord Ms. M.G. testified that she injured her arm at work and needed rehabilitation for the injury. She testified that the injury prevented them from moving into the unit. She testified that they needed someone to move into the house, so they moved their son into the rental unit at the beginning of May 2019. She testified that her son pays them \$500.00 rent each month and that he is disabled.

Ms. M.G. testified that she was not able to help her husband perform the work that would be required to move into the rental home due to her injury, and it was the injury that changed their plans to move in.

In reply, the Tenant testified that he does not accept the Landlord's excuse for not moving into the unit, because the Landlord could have hired someone to help them move or perform work to the rental unit.

The Landlord testified that they plan to sell one of their rental properties and they are slowly moving into the unit and have no intention of ever re-renting the unit.

Analysis

Section 51 (2) of the Act provides:

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. [my emphasis]

(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 #50 Compensation for Ending a Tenancy addresses the requirements for a Landlord to pay compensation to a Tenant when a Landlord ends a tenancy for Landlords use of property.

The Guideline provides that a Landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Based on all of the above, the evidence and testimony of the parties, and on a balance of probabilities, I find as follows:

Compensation for Breach of Section 51 of the Act

The Two Month Notice indicates the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

I accept the testimony before me that the Landlords informed the Tenants that the Landlords planned to use the rental unit for their own use. I accept the testimony from the Tenants and Landlord that the Landlords' son moved into the rental unit at the beginning of May 2019. I find that a close family member of the Landlord includes a child of the Landlord.

I find that the Tenants are taking a narrow interpretation of the legislation that requires the Landlord to use the property for the reason stated within the Two Month Notice. The Tenants feel the Landlord has breached because they did not move into the unit.

While I accept that the Landlords failed to use the rental property for the reason they verbally stated to the Tenants, I find that they met the stated purpose of the Two Month Notice which permits them to have a close family member move into the unit. I find that the Landlords' son moved in at the beginning of May 2019 which is within a reasonable period after the effective date of the Notice. I find that the Landlords have not breached section 51(2) of the Act.

I find that the Tenants have provided insufficient evidence that the Landlord breached section 51(2) of the Act, and therefore, the Tenants' application for compensation is dismissed without leave to reapply.

Conclusion

The Landlords met the stated purpose of the Two Month Notice by having their son move into the rental unit in May 2019. I find that the Landlords' son moved in within a reasonable period after the effective date of the Notice.

The Tenants' application for compensation due to a breach of the Act 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: December 2, 2019

Residential Tenancy Branch