



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) for monetary compensation, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

One of the Tenants was present for the hearing as was the Landlord and an agent (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service during the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party. Neither party called any witnesses.

Issues to be Decided

Are the Tenants entitled to monetary compensation?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy started on March 1, 2017. Monthly rent was \$1,800.00 and a security deposit and pet damage deposit of \$900.00 each were paid at the start of the tenancy and were resolved following the end of the tenancy. The Tenants moved out on August 28, 2018.

The Tenants have applied for compensation in the amount of \$22,488.50 which includes costs incurred through moving and 12 months compensation pursuant to Section 51 of the *Act*.

The Tenant testified that they received a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on May 29, 2018 due to the Landlord's plans to move into the rental unit. The Tenant stated her position that the Landlord did not move into the rental unit as planned.

A copy of the Two Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- 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 individual's spouse)

The effective end of tenancy date on the Two Month Notice was stated as July 31, 2018 but the parties agreed that the Tenants were provided with an additional month to move and moved out at the end of August 2018.

The Tenant testified that she was told that the Landlord would be moving into the rental unit with her children. However, she stated that no one lived in the rental unit until July 2019 when it was re-rented. She noted that they drove by the rental unit often and saw that it was not lived in and referenced a lack of yard work and furniture. The Tenant also referenced a time when a public meeting was held in the rental unit as it was connected to a family business operated by the Landlord. The Tenant stated that this confirmed that no one was living in the rental unit at the time.

The Tenants submitted photos of the rental unit that they stated were taken on December 10, 2018 and stated that the photos show that the rental unit was not being lived in.

The Tenants submitted a Monetary Order Worksheet outlining their claims which includes \$140.43 for the rental of a moving truck, \$148.50 for purchasing pizza for the people that helped them move, \$600.00 that they paid for the movers and 12 months of compensation for the Landlord not moving into the rental unit as stated on the Two Month Notice in the amount of \$21,600.00. The Tenants submitted evidence to support the costs incurred through moving.

The Landlord testified that she served the Two Month Notice to the Tenants on May 29, 2018 with the intention to move into the rental unit with her children. The Landlord also submitted a written statement regarding the events that occurred following service of the Two Month Notice. She stated that she was planning to move into the rental unit for August 2018 but that an additional month was provided to the Tenants to find a place to move to.

However, she testified that she is a single mother of two who was also caring for her two young siblings. She stated that her mother passed away on June 25, 2018 which changed the plans of her father to move to Canada and into their home with the Landlord's siblings. The Landlord stated that due to her mother's passing, her father was not doing well and was unable to move to Canada. Therefore, she noted that she had to stay in her current home to care for her siblings and children as it was a bigger home and closer to her siblings' school.

The Landlord stated that the rental unit is located on a property where she owns a family business with her father. The Landlord submitted that following the end of the tenancy, the rental unit was used as a personal office space for her, an area for her children to play, and she noted that she would cook and do laundry in the rental unit. The Landlord confirmed that no one lived in the rental unit until July 2019 when it was rented to extended family members.

The Landlord stated that she continued to intend to reside in the rental unit during the months that it was empty and was waiting for her father to confirm that he would be moving to Canada. She stated that her father would keep pushing the timeline off by another month.

The Tenant stated her position that the Landlord's mother passed away prior to service of the Two Month Notice and that the Landlord's father was denied entry to Canada prior to the Two Month Notice as well. The Landlord denied these claims.

The Landlord maintained her position that there were extenuating circumstances that prevented her from moving into the rental unit as planned and that the Two Month Notice was served to the Tenants in good faith.

The Tenant stated her position that the Landlord ended the tenancy to move into the rental unit and did not do so for 11 months before renting out the unit to new tenants.

Analysis

The parties agreed that a Two Month Notice was served to the Tenants on May 29, 2018 pursuant to Section 49 of the *Act*.

Regarding the 12 months compensation, Section 51(2) of the *Act* states the following:

(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.

The Two Month Notice served to the Tenants stated the following as the reason for ending the tenancy:

- 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 individual's spouse)

The Landlord provided testimony that she intended to move into the rental unit with her children but was unable to due to her mom passing away and her father changing his mind about moving to Canada. However, I accept the testimony of the Landlord that the rental unit was not rented out until July 2019 and during the period of August 28, 2018 to July 1, 2019, was not lived in and instead was used as a personal space for the

Landlord and her children to spend time, including use as a personal office space. I also accept that the Landlord used the rental unit to cook and do laundry.

I also find that the use of the rental unit as stated by the Landlord was supported by the testimony of the Tenant who agreed that the unit was not rented out until July 2019. The Tenant also provided testimony on a public meeting that was held at the rental unit. I find that this supports the Landlord's testimony that the rental unit was used by her and her close family members, despite not being lived in. Instead, I find that the Landlord's use of the rental unit was more along the lines of an extension of their living space.

Regarding whether the Landlord not moving into the rental unit qualifies as taking steps to accomplish the stated purpose of the Two Month Notice, I refer to *Residential Tenancy Policy Guideline 2A* which clarifies that 'vacant possession' is the absence of any use at all and would not qualify as occupying the rental unit. However, in this matter, I do not find that the Landlord had vacant possession and instead find that the Landlord was using the rental unit, despite not residing in it, and therefore find that this qualifies as 'occupying'.

Residential Tenancy Policy Guideline 50 notes the following regarding accomplishing the stated purpose of the notice to end tenancy:

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.

In this matter, I find that the Landlord did not rent out the rental unit for a period of approximately 11 months, as stated by both parties. As noted, I also find that the rental unit was "occupied" by the Landlord and her family despite not living there full time and that the rental unit was not left vacant.

I also do not find that the manner in which the Landlord used the rental unit would classify as non-residential use, given that it was used as a personal office space and for personal family matters such as cooking, laundry and the Landlord's children playing.

Therefore, although the parties discussed the Landlord's plans to move into the rental unit, I find that the Two Month Notice indicated **occupancy** of the rental unit by the Landlord or a close family member and did not require the Landlord to move in. As stated, I do not find that the Landlord left the rental unit vacant and instead find that the Landlord occupied the rental unit for a period of approximately 11 months.

The Landlord referenced extenuating circumstances that prevented her from moving into the rental unit and Section 51(3) of the *Act* provides that a landlord may be excused from paying the compensation if extenuating circumstances exist. However, I do not find that extenuating circumstances factor into this matter and instead, as stated, I find that the Landlord occupied the rental unit for a period of more than 6 months. I also do not find that the Landlord took steps towards other purposes for ending the tenancy such as renovating the unit or re-renting it during the first six months.

Therefore, I am not satisfied that the Tenants have established that they are owed compensation under Section 51 of the *Act* or that the Tenants should be awarded compensation for moving costs. The Tenants' application is dismissed, without leave to reapply. As the Tenants were not successful with their application, I also decline to award the recovery of the filing fee.

Conclusion

The Tenants' Application for Dispute Resolution 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 09, 2019

Residential Tenancy Branch