



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy originally began in December 2017. The monthly rent was \$2,700.00 payable on the first of each month. The rental unit is a 5 bedroom suite on the main and second floor of a detached home. There was a basement suite in the building occupied by a separate tenant. The landlords resided in a 1-Bedroom laneway house on the property.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated March 24, 2019 indicating the reason for the tenancy to end as the landlord or close family member would be occupying the rental unit. The tenants vacated the rental unit by May 31, 2019 in accordance with the 2 Month Notice.

The tenants submit that the landlord did not use the rental unit for its stated purpose. The tenants submitted into documentary evidence a copy of a Craigslist ad dated August 12, 2019 showing the rental unit as available for rent. The tenants also engaged in correspondence with the landlord confirming that the rental unit was being made available for rent. The tenants submitted into documentary evidence copies of the correspondence. The tenants testified that they have no information about whom, if anyone, is currently occupying the rental suite.

The landlord testified that at the time they issued the 2 Month Notice they had intended for their adult daughter to move into the rental unit with her family. The landlord gave evidence that due to changes in the family circumstances their adult daughter did not end up moving into the rental unit. The landlords testified that instead, they and their adult son moved into the rental unit in October 2019 and occupy it as their primary residence as of the date of the hearing.

The landlords submit that they delayed moving from the one-level laneway house into the two-level rental suite as the female landlord was recovering from medical issues and was advised to limit movement and use of stairs. The landlord submitted into evidence copies of medical letters recommending limited walking and use of stairs.

The landlord testified that one of the reasons for moving into the rental unit was financial and submits into evidence a copy of a letter from their accountant who advised them to reside in the rental unit to avoid "potentially high capital gains tax in the future". The landlords gave evidence that after vacating the laneway house they listed it for rent at a rate of \$2,250.00 per month. The landlord submitted into evidence a copy of the Craigslist ad showing the laneway house being offered for rent.

The landlord confirmed that they did advertise the rental unit for rent online in August 2019. The landlord explained that they posted the advertisement as they were uncertain about their finances and who would occupy the suite.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states if:

- (a) steps have not been 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
- (b) the rental unit is 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

In the 2 Month Notice the landlord indicated that the tenancy is ending as the landlord or a close family member will occupy the rental unit. The tenant gave evidence that instead of being occupied the rental unit was placed on the market for rent. The tenant provided documentary evidence by way of the online listing showing the rental unit as available for rent and correspondence with the landlord.

While the landlords submit that they are occupying the rental unit, I find that there is insufficient evidence in support of their position. There is minimal documentary evidence that the landlords have relocated from their laneway home into the rental unit. I find that the brief email correspondence with an insurance broker to be insufficient to conclude that the landlords have moved. Much of the documentary and testimonial evidence of the landlord focused on their original intention to have their adult daughter occupy the rental unit and the circumstances that prevented this from occurring. There was little substantive evidence provided regarding their move into the rental suite.

I do not find the brief letter from the landlords' financial advisor stating that there are potential tax consequences in the future to be sufficient to determine that the landlords moved into the rental unit. Additionally, I find it somewhat unlikely that a landlord who was in recovery for a medical condition and has been advised against walking and use of stairs after a surgery on September 12, 2019 would choose to move into a multi-level suite a month later in October.

I find that the landlord gave little information regarding their adult son whom they mentioned in passing was also living in the rental suite. The landlord gave some testimony that the adult son had graduated from school elsewhere and moved into the rental suite to pursue further studies but provided little details or cogent testimony on this point. I find that a letter confirming enrollment is insufficient to determine the residence of the adult son.

Furthermore, I do not find the landlord's testimony that the laneway house has been rented out to new tenants to be supported in any of the documents. If the landlord had moved out of the laneway house and rented it out, it would be reasonable to expect that there would be some documentary evidence by way of a signed tenancy agreement or move-in inspection report. I do not find the screenshot of an online advertisement to be sufficient to establish that the landlords have vacated the rental suite and moved into the rental unit.

Based on the totality of the evidence of the parties I find that the tenants have established on a balance of probabilities that the landlords have not accomplished the stated purpose for ending the tenancy on the 2 Month Notice; that the landlord or a close family member has not occupied the rental suite.

I further find that the landlords have not shown that there are extenuating circumstances in accordance with section 51(3) of the Act that prevented the landlord from accomplishing the stated purpose. While I accept that the landlords' adult daughter who was originally intended to occupy the suite, chose not to do so due to family developments, I do not find the circumstances to be extenuating. It is reasonable to expect that an adult child may change their mind about plans or choose to reside with their spouse's family. I do not find the circumstances as described by the landlord to meet with the definition of

extenuating circumstances that would excuse the landlord from accomplishing the stated purpose for ending the tenancy.

I find, based on the evidence of the parties, that the landlords did not use the rental unit for the purpose stated on the 2 Month Notice. Consequently, I find that the tenants are entitled to a monetary award of \$32,400.00, the equivalent of 12 times the monthly rent for this tenancy.

As the tenants were successful in their application they are also entitled to recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$32,500.00.

The tenants are provided with these Orders in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 17, 2019

Residential Tenancy Branch