



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for a monetary order for money owed or compensation under the Act and for recovery of the filing fee paid for this application.

The tenant and the landlords attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence in advance of the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlords and to recovery of the filing fee paid for this application?

Background and Evidence

The tenant said he originally began his tenancy in November 2004, with a previous owner, and that his monthly rent at the end of the tenancy was \$475.00.

The tenant said that he vacated the rental unit on or about October 31, 2018, by the terms of the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice).

This Notice was issued by the current landlords, who purchased the building, sometime in 2017. The Notice was dated July 29, 2018, signed by the landlord JB, served on the tenant on that date, and listed an effective move-out date of October 31, 2018.

As a reason for ending the tenancy, the Notice listed that the landlord or a close family member intends in good faith to occupy the rental unit.

The tenant submitted further that he chose to accept that the tenancy was ending as he vacated by the date on the Notice.

In support of his application, the tenant said there was no evidence the landlords moved into the rental unit. When asked to explain, the tenant said he has driven by the former rental unit and did not see JB's vehicle; however, he did drive by the landlords' old address and did see the vehicle.

The tenant submitted that he is entitled to compensation equivalent to 12 months' rent, as the landlord has not used the rental unit for the stated purpose listed on the Notice, in the amount of \$5,700.00.

The tenant submitted a copy of the Notice.

Landlords' response-

The landlord, DB, referred to their documentary evidence and said that they began moving their personal property into the rental unit during the first week in November 2018, and shortly after, the city said the premises did not have sufficient permits for occupation. As a result, they were prevented from moving into the rental unit until the matters of the permits were resolved.

The landlord said their belongings are still in the rental unit and it remains empty. The landlord said they were provided a lengthy explanation by the city as to why the premises had to remain empty.

The landlords submitted that they learned the previous owner had not completed the proper permits for the residential units, nor was it zoned for a dual purpose. The building has an occupied commercial front space and two residential units in the rear of the building.

The landlord said that the rental unit and the attached rental unit are still vacant.

The landlords said that they worked with a land title company for all renovations; however, they were also informed that one option was demolition of the property. The landlords said that the rental unit is not a viable home to live in and the claim process has taken over a year, with still no resolution.

The landlords said that they have just now settled with the land title company and their plans have been approved.

The landlords submitted that they served the Notice in good faith as it was their intention to move in and they were prevented from so doing by the city. The landlords said they still intend to move into the rental unit when it is fully approved by the city.

The landlords' relevant evidence included a letter from the city, an inspection report from the city, a letter from the land title company, and an engineer's report.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In the case before me, the undisputed evidence shows that the tenant was issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act. In this case, the Notice listed that the landlord or a close family member intends in good faith to occupy the rental unit.

Therefore, the landlord must “occupy” the rental unit for six months starting within a reasonable amount of time after the tenancy ended to fulfill the purpose stated on the 2 Month Notice that was served upon the tenant.

Section 51(2) provides that if 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 if 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 tenant is entitled to compensation equivalent of 12 months’ rent under the tenancy agreement.

While Residential Policy Guideline 2A states that the “implication” of occupy means to “occupy for a residential purpose”, I find this policy does not take a reasonable and common-sense stance.

The definition of “occupy” as provided in *Black’s Law* dictionary defines “occupy” to include: to hold possession; and to hold or keep for use. As the Act does not provide a definition, I defer to the legal definition.

In this case, I find the landlords submitted sufficient evidence that the rental unit has remained vacant since the tenancy ended but that their personal possessions are still in the rental unit. The tenant failed to dispute this evidence.

I therefore find the landlords have met their obligation to “occupy” the rental unit.

The rental unit has not been re-rented or sold within six months after the end of the tenancy and I find the landlord’s evidence supports that they fully intend to move into the rental unit when legally permitted.

Due to the above, I find the tenant has submitted insufficient evidence to support his application for compensation.

As a result, I dismiss the tenant’s application for monetary compensation and for recovery of his filing fee.

Conclusion

For the above reasons, I have dismissed the tenant's application, including his request to recover his 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: January 10, 2020

Residential Tenancy Branch