



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking compensation from the landlord.

The hearing was conducted via teleconference and was attended by both tenants and both landlords.

Both parties agreed that they had received each other's evidence packages and were prepared to deal with matters related in the tenants' Application for Dispute Resolution. I note that both parties made reference to the tenants' submissions regarding missing items from when they moved out of the rental unit.

In their evidence, the tenants had submitted that they were seeking either the return of some personal property and/or compensation in the amount of \$860.00 for their loss. However, I also note that the Application did not indicate they were seeking these claims, nor did it indicate an amount of claim in excess of the \$11,100.00 for compensation relating to the end of the tenancy. As such, I have not considered this part of the tenants' submissions and they remain at liberty to file an Application seeking these claims, subject to any limitations set forth in the *Residential Tenancy Act (Act)*.

The tenants also identified that they had a witness available to provide testimony to confirm their position, however after hearing the submissions of both parties and clarification on what their witness intended to provide as testimony, I advised the tenants that I did not think the witness would provide much value. The tenants still asked to call their witness into the hearing. I attempted to do so, however, technical difficulties prevented me from doing so. The witness was not heard.

I acknowledged at the outset of the hearing that this file had been originally scheduled with another arbitrator, however, he was unavailable and that it had just been reassigned to me. The landlord questioned whether or not the hearing should proceed without me having a chance to review the submitted evidence.

I advised the parties that they should present their evidence to me in a manner that takes into account that I have not reviewed the evidence yet and that it was their role in the hearing to do so and to point out specific aspects of their documentary submissions that they felt were relevant and on point. The landlords both provided a complete

overview of their submissions and identified specific pieces of evidence that supported their submissions. The tenants also made thorough oral submissions and some documentary submissions.

I also indicated that if I felt there was a need to reconvene the hearing after reviewing the documentary evidence I would do so. After reviewing the oral testimony and written submissions of both parties, I find there is no need to reconvene the hearing as both parties have provided sufficient evidence and testimony to adjudicate this claim with full consideration of all evidence submitted by both parties. I note this decision records only the relevant evidence and testimony that I have considered.

I note that the landlords refer to several different properties in their submissions for ease of reference I will refer to the properties as follows: Property A or rental unit – the subject dispute address or rental unit; Property B – the renovation project property; and Property C – the Air BnB property.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for the landlords not using the rental unit for the stated purpose on a notice to end tenancy for landlord's use of the property and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 51, 67, and 72 of the *Act*.

Background and Evidence

Both parties submitted copies of tenancy agreements. The landlords submitted a tenancy agreement signed by the parties on July 17, 2013 for a month to month tenancy beginning on August 1, 2013 for a monthly rent of \$900.00 due on the first of each month with a security deposit of \$450.00 paid.

The tenants submitted a copy of a tenancy agreement signed by the parties on July 1, 2017 for a month to month tenancy beginning on July 1, 2017 for a monthly rent of \$925.00 due on the first of each month with a security deposit of \$450.00 paid. It is noted that the deposit had been paid 3 or 4 years ago.

During the hearing the tenants could not remember if the rent at the end of the tenancy was \$950.00 or \$975.00. The landlords submitted that it was still \$925.00. I note that the tenants' Application for Dispute Resolution indicates that the tenants are seeking \$11,100.00 in compensation based on 12 months worth of rent. Using this calculation, it appears the tenants, when submitting their Application, thought the rent was \$925.00. As such, I accept that rent at the end of the tenancy was \$925.00.

The parties agreed that in February 2019 the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective vacancy date of April 30, 2019 citing the rental unit would be occupied by the landlord or the landlord's close family member. The tenants submitted a copy of the Notice to End Tenancy dated February 2, 2019 into evidence.

The landlords submitted that they own Property A which is a duplex with two additional rental units in each side. The landlords also had recently purchased a new home that required renovations prior to them moving into it, this is Property B. They noted that after purchasing Property B, they needed a place to stay until the renovations were completed and so they moved into Property C.

As work progressed at Property B the landlords determined that they needed to generate some income to complete the work and as such they decided that they would rent out Property C as an Air BnB short term rental. In order to accomplish this, they would need another place to live and so they issued the Notice to End Tenancy, so they could move into Property A.

The landlords submitted that they had chosen these tenants out of the 4 possible rental units because of recent events involving these tenants, a fall on the stairs by the male tenant and a fall by the female tenant when she tripped on a pine cone. The landlord thought that the tenants were no longer happy in the rental unit and that the care and maintenance required on the property was getting to be too much for the tenants.

The tenants submitted that the landlord did not move into the rental unit at all but that new occupants had moved into the rental unit. The tenants assert that the new occupants moved in sometime in or prior to July 2019. The tenants submitted they had a friend who lived across the street from the rental unit who said that he watched the unit every day and never saw the landlords move in.

In addition, the tenants submitted that they also made contact with the new occupants of the rental unit because they still have mail being delivered to the rental unit. In support of their claim the tenants submitted into evidence copies of text messages sent to the new occupants beginning August 29, 2019 and up to December 11, 2019 asking if any mailed had arrived for them.

The landlords submitted that after the tenants moved out of the rental unit they immediately began cleaning and making some repairs to the rental unit and that for the month of May they stayed at the rental unit periodically and moved in furniture once the floors had been completed. They also submitted that for the months of June and July they lived in the rental unit but would leave early in the morning and return in the evening as they were working on the renovations at Property B and cleaning and doing laundry for their Air BnB Property C.

While the original plan, according to the landlords, included staying at the rental unit until Property B was completed their circumstances changed. They found that living in the community where the rental unit was and doing all their work in a neighbouring community was starting to take a big toll on their bodies and psyche. They also knew that in September the female landlord would be driving their grandchild to school which would require her to travel through a very congested urban area at rush hour.

In addition, they found that their income from the Air BnB allowed them to hire contractors to complete some work and so they decided to re-rent the unit as of September 2019. So, at the end of July they began advertising the unit to be available in September. However, because they had planned some trips in August and September, they found some new occupants who could move in as early as August 6th or 7th, 2019.

Analysis

Section 49 of the *Act* allows a landlord to end a periodic tenancy by issuing a Two Month Notice to End Tenancy for Landlord's Use of Property, if the landlord intends, in good faith, to occupy the rental unit.

Section 51(1) of the *Act* stipulates that if a landlord issues such a notice the tenant who receives it is entitled to compensation in the amount equivalent to one month's rent payable under the tenancy agreement. The parties did not raise this as any issue during the hearing.

Section 51(2) states that subject to subsection (3) the landlord must pay the tenant, in addition to the one-month compensation noted under Section 51(1) an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement 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
- The rental unit is not used for that stated purpose for at least 6 month's duration, beginning within a reasonable period after the effective date of the notice.

Section 51(3) does allow the director to excuse a landlord, from paying the tenant this additional compensation, if in the director's opinion, extenuating circumstances prevented the landlord from either accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy or using the rental unit for the 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 provides guidance on circumstances that will constitute accomplishing the stated purpose when a landlord provides a notice to end the tenancy for the landlord to occupy the rental unit as follows:

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the 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.

Guideline 50 also provides guidance on the issue of extenuating circumstances as follows:

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. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

In the case before me, I am satisfied the landlords issued a Notice to End Tenancy for Landlord's Use of Property that had an effective vacancy date of April 30, 2019 for the purpose of having the landlords occupy the rental unit.

I am also satisfied, primarily from the testimony and evidence submitted by the landlords, that while they completed some minor repairs to the rental unit during the month of May 2019, they did occupy the rental unit from the beginning of May until approximately August 6th or 7th, 2019. As such, I find the landlords did not use the

rental unit for the stated purpose for a period of at least 6 months as is required under the *Act* and Policy Guideline.

Therefore, I find the tenants are entitled to compensation in an amount that is the equivalent of 12 times the monthly rent at the end of the tenancy. As noted above, I found the rent amount at the end of the tenancy was \$925.00. As such, I find the tenants are entitled to compensation in the amount of \$11,100.00 (12 X \$925.00).

Furthermore, I find that the landlords have provided no evidence of extenuating circumstances that would allow for the consideration of excusing the landlords from paying this compensation. I make this finding, based solely on the landlords' submissions which included, in part, that their plan, all along, was to only move into the rental unit until renovations to Property B were completed.

I note that despite the original plan the landlords were relying on the income from their Air BnB to ensure they could proceed with their renovations at Property B and be completed; there was nothing preventing the landlords from remaining in the rental unit for at least 6 months after the effective date. Rather the landlords made a choice to move out of the rental unit due to their good fortune of being able to complete their renovations sooner than planned and the timing of their travel plans.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$11,200.00** comprised of \$11,100.00 compensation for the landlord not using the rental unit for the stated purpose and the \$100.00 fee paid by the tenants for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: January 2, 2020

Residential Tenancy Branch