Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On October 1, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the "*Act*") and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both Tenants and both Landlords attended the hearing. All in attendance provided a solemn affirmation.

The Tenants advised that they served one Notice of Hearing and evidence package to the Landlords by registered mail on October 2, 2019 and the Landlords confirmed that they received this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlords were served the Notice of Hearing and evidence package.

The Landlords advised that they served their evidence to the Tenants by mail on January 14, 2020 and the Tenants confirmed that they received this package. As service of the evidence complies with the timeframe requirements of Rule 3.15 of the Rules of Procedure, and based on Section 88 of the *Act*, I am satisfied that the Tenants were served this evidence. As such, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?

- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy originally started on December 1, 2014 but the most current tenancy was agreed to on June 1, 2018. The tenancy ended on May 31, 2019 when the Tenants vacated the rental unit based on the Notice. Rent was established at $1,184.00 per month and was due on the first day of each month. A security deposit of $650.00 and a pet damage deposit of $650.00 were also paid.

All parties agreed that the Landlords served the Notice to the Tenants on August 27, 2018 despite a typographical error listing the date incorrectly as August 27, 2019. The reason the Landlords checked off on the Notice was because "The landlord is family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit." The effective date of the Notice was noted as May 31, 2019.

F.B. advised that the rental unit is owned by a family corporation and that himself, J.B., and their five children make up the seven shareholders of this family corporation. As the shareholders wished to use the rental unit beginning June 1, 2019, the Notice was served to the Tenants. As per their written submissions, he noted that they did not review the *Act* prior to serving the Notice and were not aware that they were required to compensate the Tenants in the amount of one month's rent. In their written submissions, it stated that a handyman conducted renovations to the rental unit for the month of June 2019, that the rental unit was also used for storage of property from another house, and that the rental unit has been used by various shareholders "on irregular weekends during the off-season." He stated that he stayed in the rental property overnight on two or three occasions in or around October and November 2019. He advised that this was a recreational property, open for use by all the shareholders if they wanted. It was used for this purpose on occasion, it was used for the storage of furniture, and it was not rented to anyone else.

J.B. advised that a handyman conducted renovations on the rental unit in June 2019. Then, two daughters, who are both shareholders, moved into the rental unit in July 2019. One of these daughters moved out and the other one stayed there until she also left in September 2019. The handyman came back to work on the property occasionally after this. The Landlords moved furniture into the rental unit around Thanksgiving, for storage. She stated that this property is like a second home and is available for use for any of the shareholders as a recreational property.

The Tenants advised that "lots of people have told them" that one daughter had used the rental unit for approximately five weeks starting in July 2019 and that after she left, no one else moved in. They stated that renovations commenced on the rental unit in June for the month. In addition, they advised that they did not submit any evidence that the rental unit was vacant for six months from the effective date of the Notice. They referenced the Landlords' letter dated September 6, 2018 where the Landlords stated the following:

> We're not entirely sure how a summer of sharing is going to work out for everyone. If it does work out well, we're likely to spend some time on renovations over the winter of 2019/20. If it doesn't, the reno's will be minimal and we're likely in the market for longer term tenants in 2020. We'd be happy to *re rent it to the two of you if you're unhappy with your new arrangements*.

It is their position that the Landlords did not use the property for the stated purpose for at least six months after the effective date of the Notice. As such, they are seeking compensation in the amount of **$14,220.00** pursuant to Section 51(2) of the *Act*.

Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlords' right to end a tenancy in respect of a rental unit where the "landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit."

With respect to the Tenants' claim for twelve-months' compensation owed to them as the Landlords did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was dated September 27, 2018 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

> ***51*** *(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.*

When reviewing the totality of the evidence before me, at the time the Notice was served, the Landlords advised that their intentions were to use the property for recreational use for all of the stakeholders and that the Notice was served in good faith. There is no doubt that this may have been the case; however, the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlords followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

I understand the Tenants' concerns with respect to their doubts that the Landlords did not use the property for the stated purpose; however, the reason for the Notice was that at least one of the members of the family corporation, or a close family member of those shareholders, would occupy the rental unit. In this Application, the burden of proof is on the Tenants to substantiate their claims. While they provided their testimony about their belief of how the rental unit was used, they submitted insufficient evidence to corroborate their position. I find that most of their testimony is based on speculation and hearsay, without definitive evidence such as statements from others confirming that the rental unit was indeed left vacant.

When weighing this against the Landlords' evidence and their testimony, I find it important to note that Policy Guideline 2A clarifies what would be considered occupation of a rental unit in contrast to what would be considered vacant possession. It states that, "Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused." Based on the testimony of the Landlords, I am satisfied that they have not left the rental unit vacant and unused as this property is available to any of the shareholders at any time as it is being used as a recreational property. Furthermore, two of the shareholders resided in the rental unit for over a month, and other shareholders have occasionally lived there overnight.

When weighing this against the Tenants' lack of evidence demonstrating that the rental unit has not been used for the stated purpose, I do not find that the Tenants' evidence is persuasive or compelling enough to outweigh the Landlords' evidence that they, or one of the shareholders of the family corporation, have occupied the rental unit for at least six months after the effective date of the Notice. Therefore, on a balance of probabilities, I am satisfied that the Landlords used the property for the stated purpose and did not contravene the *Act* in this circumstance. As such, I am satisfied that the

Tenants are not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, and I dismiss their claim on this issue in its entirety.

As the Tenants were not successful in their claim, I find that the Tenants are not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenants' Application for Dispute Resolution 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: February 6, 2020

Residential Tenancy Branch