



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened to deal with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for having received and acted upon a landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Notice);
- recovery of the filing fee paid for this application.

The hearing process was explained to the parties listed on the style of cause page and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

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

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

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

Issue(s) to be Decided

Are the tenants entitled to compensation from the listed landlord/respondent and to recover their filing fee?

Background and Evidence

While I have turned my mind to all the documentary and oral evidence, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The tenants' monetary claim against the landlord is \$17,356, which is the equivalent of 12 months' rent. The tenant has also requested the filing fee of \$100.

As the basis for this claim, the tenant submitted that they are entitled to this amount as they received a Two Month Notice to End Tenancy for Landlord's Use of Property and that the rental unit was not used for the stated purpose listed on the Notice.

Tenant's submissions-

In support of her application, the tenant submitted that the tenancy began on April 1, 2015, with her original and only landlord in this matter, for a beginning monthly rent of \$1,300. The tenant submitted a copy of the written tenancy agreement.

The Notice received by the tenant was dated January 25, 2019, and was served on the tenant by her landlord by registered mail, listing an end of tenancy date of March 31, 2019.

As a reason for ending the tenancy, the Notice listed all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The tenant provided a copy of the Notice.

The tenant said that they vacated the rental unit on or about March 23, 2019.

The tenant submitted without dispute that the ending monthly rent was \$1,438.

The tenant said after they vacated the rental unit, she became aware that the purchaser, the respondent here, has not used the rental unit for the stated purpose.

The tenant submitted a document which indicates it is the “Written Testimony” of applicant, LC, who did not attend the hearing. The tenant submitted that the meeting showed that the purchaser’s intent was to rent out the property.

In referring to the document, the tenant said that on February 28, 2019, LC was at home to let in the landlord for a visit.

The document indicated that LC, the landlord, the landlord’s husband, a contractor familiar to the landlord, a contractor unfamiliar to the landlord, and a realtor were present at the meeting.

The document said that the visit was the first time the landlord’s husband visited the rental unit, that this was their third investment property, that the landlord’s husband asked how much rent their rent was, and that the purchasers would likely charge \$2,000 to cover the mortgage payments.

The document also said that there was a discussion between the contractors and the new owners about replacing the carpet with hardwood floors similar to floors in other units in the building, replacing new, white countertops, and discussing potential renovations to the kitchen.

The document also said the potential renovations would allow the purchasers to charge more in monthly rent and that the renovations would be complete in a month.

In addition, the tenant submitted a copy of a message from a former neighbour of the rental unit, stating that she has not seen the landlord or their family living in the rental unit.

Landlord’s submissions-

The landlord’s legal counsel questioned the tenant’s documentary evidence, as the statements were hearsay, not direct testimony.

The legal counsel submitted that the landlord’s mother was to move into the rental unit after the tenants vacated; however, repairs took longer than expected. Some of the repairs included replacing drywall due to water seeping in from the unit above in April 2019, which was unforeseen. According to the legal counsel, the repairs were not complete until September 2019.

The legal counsel submitted that the landlord's mother became ill and on June 16, 2019, it was necessary for her to travel back to her home country for heart surgery, which took place on August 27, 2019. The landlord submitted a copy of the certificate of surgery and the flight confirmation.

The legal counsel submitted that the landlord's mother has now moved into the rental unit, as of January 1, 2020, when she was released from medical care to be able to travel.

The landlord submitted copies of the landlord's mother travel itinerary and airline flight confirmation. The dates show that the landlord's mother arrived in the country on March 23, 2019 and again on January 1, 2020.

Landlord's contractor submissions-

The contractor, LL, said that when he attended the rental unit with the landlord's spouse, when tenant, LC, was present, the meeting was about quotes and measurements.

LL said he did not remember talking to the landlord's spouse about the rental unit being re-rented and did not talk about white cabinets, as mentioned in LC's written statement.

LL said the water damage occurred on April 12, 2019, and that he was prevented by the strata from any further work until June 2019. The repairs and renovations were not completed until September 2019.

Landlord's spouse submissions-

The landlord's spouse, MS, said he does not remember and would not discuss financing and mortgage payments in front of LC, as reflected in LC's written statement.

Analysis

I have reviewed all testimonial, documentary and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

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

As the claimants, the tenants had the burden to prove their claim, again on a balance of probabilities.

In the case before me, the undisputed evidence is that the tenants' previous landlord issued the tenant a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, for a move-out date of March 31, 2019. The tenants complied with the move-out date.

The former landlord listed that all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

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. (emphasis added).

Under section 51(3) of the Act, provides that a landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice 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, section E, states that if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose so that it would be unreasonable and unjust for the landlord to pay the compensation, the arbitrator may excuse the landlord from paying the compensation.

In this case, I find the tenants were unable to prove that the respondent's mother has not moved into the rental unit. The statement from her former neighbour was vague and stale, as it was dated September 9, 2019. Apart from that statement, I find the tenant submitted insufficient evidence that the rental unit has even been re-rented.

In this case, I accept the tenants' evidence that the rental unit was not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, in this case March 31, 2019.

I, however, find that extenuating circumstances prevented the landlord from accomplishing the stated purpose of having her mother moving in. I find the landlord submitted sufficient evidence that her mother's serious health issues delayed her from moving in within the six months.

The landlord submitted a document showing that her mother traveled to her home country in June 2019, had a heart bypass surgery on August 27, 2019, and that she was to come to the hospital once a month to follow-up, for the first three months.

Considering the medical and travel documents, I find it reasonable that the landlord/respondent's mother moved into the rental unit as soon as possible.

For the above reasons, I therefore excuse the landlord from paying the tenant the monetary compensation as I find it would be unreasonable and unjust for the landlord to do so in light of her mother's health and surgical procedures.

As a result, I dismiss the tenants' application for monetary compensation and for recovery of their filing fee.

Conclusion

The tenants' application for monetary compensation for the equivalent of 12 months' rent and recovery of the filing fee is dismissed, due to extenuating circumstances as described herein.

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: March 31, 2020

Residential Tenancy Branch