



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants on November 19, 2020 under the *Residential Tenancy Act* (the “*Act*”), for a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee.

The Tenants, the Landlord, and the Landlord’s representative D.D. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. 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 money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The Tenants testified that their tenancy began on September 1, 2016. The parties agreed that the Landlord purchased the rental property sometime in 2017 and assumed the tenancy. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$1,000.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$400.00 which has since been returned to them. The Tenancy ended on October 31, 2019.

The Tenant stated that on August 31, 2019 they received a Two Month Notice from the Landlord, stating that the rental unit will be occupied by the Landlord or the Landlord's close family member. The Two Month Notice dated August 31, 2019, has an effective vacancy date of October 31, 2019. The parties submitted a copy of the Two Month Notice in support.

The Tenants testified that they received notification from the occupant who resides above the rental unit, stating that the Landlord had re-rented the rental unit to a new occupant in the amount of \$1,500.00 per month with utilities included. The Tenants stated that they suspect the Landlord has not followed through on the intended purpose of the Two Month Notice. As such, the Tenant stated that they feel entitled to compensation in the amount of \$12,000.00 which is equivalent to twelve times the amount of rent. If successful, the Tenants are also seeking the return of the filling fee.

D.D. testified that the Landlord served the Two Month Notice to the Tenants as the Landlord's son intended to occupy the rental unit. D.D. stated that the Landlord's son, N.N., had lost his employment and needed a place to stay. D.D. stated that the Landlord's son moved into the rental unit sometime in the first week of November 2019 and has resided in the rental unit ever since. D.D. stated that the Landlord's son pays rent to the Landlord when he is financially able to. The Landlord submitted a copy of his monthly bank statements indicating that the Landlord received an e-transfer from N.N. each month that he is able to pay rent.

D.D. stated that the Landlord is flexible with his son around the payment of rent and that the Landlord pays all the utilities for the rental property in support of his sons financial situation. The Landlord provide a copy of the monthly cable and internet bills in support. Furthermore, the Landlord has provided a copy of his son's identification which displays the Landlord's son's updated address as being the same address as the dispute

address. D.D. stated that the Landlord has followed through on the intended purpose of the Two Month Notice.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 51(2) of the Act states that in addition to the amount payable under subsection one, if 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 the rental unit is not used for that stated purpose for at least six 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 to 12 times the monthly rent payable under the tenancy agreement.

In this case, the parties agreed that the Tenants moved out of the rental unit on October 31, 2019 in compliance with the Two Month Notice for Landlord's Use of the Property. The Tenants provided a statement from the occupant who resided above the rental unit. I find that the statement does not provide sufficient evidence to demonstrate that the Landlord acted in bad faith and did not follow through on the intended purpose of the Two Month Notice.

D.D. testified that the Landlord's son did move into the rental unit due to financial reasons in November 2019, and has resided in the rental unit ever since. The Landlord provided a copy of his monthly bank statements indicating that the Landlord's son has been paying the Landlord rent when he is able to. Furthermore, the Landlord provided a copy of his son's identification which indicates that the Landlord's son's address is the same as the dispute address. Lastly, the Landlord provided cable and internet invoices which are in the Landlord's name. As such, I find that it is more likely than not that the Landlord's son occupies the rental unit and that the Landlord followed through on the intended purpose of the Two Month Notice.

In light of the above, I dismiss the Tenants' Application without leave to reapply. As the Tenants were not successful with their Application, I find that they are not entitled to the return of their filing fee.

Conclusion

The Tenants have provided insufficient evidence to demonstrate that the Landlord has acted contrary to the Two Month Notice for Landlord's Use. I dismiss the Tenants Application 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: April 23, 2020

Residential Tenancy Branch