



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMI Realty, Inc.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

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

- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The tenants, the landlord's agent, and the landlords/owners attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The landlord's agent confirmed receipt of the tenants' application and evidence; the landlord's agent said they had not submitted evidence as the landlords/owners were present to provide testimony.

Thereafter all participants were provided the opportunity to present their evidence orally and to refer to relevant 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 monetary compensation from the landlords and to recovery of the filing fee paid for this application?

Background and Evidence

The tenants did not submit a copy of the written tenancy agreement.

In response to my inquiry, the tenants said the tenancy started on May 1, 2018; later, tenant TM found a copy of the written tenancy agreement, which said the tenancy began on March 1, 2018.

The tenants submitted that they vacated the rental unit on or about August 31, 2019, by the terms of the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice). The tenants submitted a copy of the Notice.

This Notice was issued by the landlord's agent, was dated June 18, 2019, and listed an effective move-out date of August 31, 2019.

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.

In support of their application, the tenant said that it was brought to their attention that the owners had undertaken a major renovation in the house, which prompted this application. The tenants said that the owners were living in the basement (lower level).

The tenants submitted that the landlords should have issued them a Four Month Notice to end the tenancy for major renovation.

The tenants wrote that it was their feeling that the owners would undertake a significant renovation. This submission was in a 1 page written statement provided into evidence.

The tenants submitted that they are entitled to compensation equivalent to 12 months' rent, in the amount of \$35,000.00, as the landlords undertook major renovations.

In response to my inquiry, the tenant said their rental unit included an upper and lower level, and that the lower level was a self-contained suite. The tenants confirmed that they rented the entire house.

Landlords' response-

The landlord, KH, said that she and the other landlord/owner moved into the home after the tenants vacated, they live in the upper unit, and undertook some renovations as they had not lived there for 10 years.

The landlords submitted that they have and continue to live in the home in question.

Analysis

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

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the tenants have the burden of proof to substantiate their claim on a balance of probabilities.

The undisputed evidence shows that the tenants were 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 tenants.

Residential Policy Guideline 2A states that the "implication" of occupy means to "occupy for a residential purpose".

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.

It was not clear to me why the tenants in their application claimed that the landlords have not taken steps toward the purpose for which the Notice was given within a reasonable period of time after the effective date. The tenants themselves confirmed that the basement (lower level) was part of their rental unit and that the landlords were living there.

The tenants did not assert that anyone else was living in the upper floor, in other words, other tenants, and the landlords said they were living in the upper floor. The tenants failed to dispute this testimony.

Nothing in the Act prohibits owners, who might be previous landlords, from making renovations once they move back into their home.

Due to the above, I find the tenants have submitted insufficient evidence to support their application for monetary compensation.

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

Conclusion

For the above reasons, I have dismissed the tenants' application, including their request to recover the 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: May 13, 2020