



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for compensation under section 51 of the Act, and to recover the filing fee.

The tenants amended their application on December 12, 2019, adding addition claims as well as increasing their claim from \$35,000.00 to \$55,722.18. I find their claim is in an amount not within my jurisdiction. Therefore, I decline to hear the tenants amended application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Are the tenants entitled to a monetary order for compensation?

Background and Evidence

The tenancy began on June 15, 2016. Rent in the amount of \$4,400.00 was payable on the first of each month. A security deposit of \$2,200.00 was paid by the tenants.

The parties agreed that the tenants were served with a Two Month Notice to End Tenancy for Landlords Use of Property.

The reason stated in the Notice was that:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse)

The tenants testified that they vacated the property on June 21, 2019; however, they found out that the landlords had re-rented the property on November 14, 2019. The tenants stated that the landlords were required to use the property for at least six months, which the earliest they could have moved was December 22, 2019.

The landlord testified that they moved into the property on June 22, 2019, as they wanted to be closer to their children, grandchildren and they have a passion for gardening. The landlord stated that they move out of the property on November 15, 2019, due to three incidents.

The landlord testified that he and his wife are senior in their 70's and that he often travels and is away for several weeks at a time, leaving his wife alone. The landlord stated that there were three incidents that lead them to leave the premises.

The landlord testified that the first incident was when they were contact by the police because they found their laptop, which was stolen from someone breaking into the garage.

The landlord testified that there was a second incident was there was an intruder in the basement as they used a crowbar on the door. The landlord stated that they put bars on the window for security; however, this did not help his wife's anxiety or fear.

The landlord testified that the third incident is when there was a homeless person found wondering in the back yard further enhancing his wife anxiety.

The landlord testified that they only vacated the property because his wife was scared, her anxiety was extremely bad, and she felt vulnerable due to her age and she wanted to move back into an apartment.

The tenant testified that the landlord should be aware that incident such as these happened when you live within the city as these can be expected. The tenant stated

that they had no issues, such as the ones described by the landlord, during their tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 51 of the Act, states:

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

In this case, I accept the landlords moved into the premise on June 22, 2019 and vacated on November 15, 2019. The landlords lived there for five (5) months. I find the landlords breached section 51(2)(b) of the Act, as they did not hold the property for their own use for at least six months.

Section 51 of the Act, states:

3)The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) **if, in the director's opinion**, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

- (a)accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy,
- or

(b)using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find the tenants position unreasonable that the landlords should expected crime when living in the city area. No one should expect to be a victim of crime and are entitled to feel safe and secure in their own home.

I accept the landlord's evidence that they moved into the premise to be closer to family and their passion of gardening. I accept the evidence of the landlord that they were the victim of crime on two occasions and a third incident of someone found in their backyard. This incident left the senior female landlord feeling scared, vulnerable, and that her anxiety was high.

I find it would be unjust to minimize her feeling, which are reasonable when a victim of crime. I find it reasonable that the female landlord wanted to move to an environment to which she left secure and safe an apartment.

In my opinion, I find it was only due to the extenuating circumstance of the landlords being a victim of crime that prevented the landlords from meet their obligation to reside in the premise for at least six months. I find it reasonable to excuse the landlords from paying any compensation that may have been issued under section 51(2) of the Act.

Based on the above finding, I dismiss the tenants' application for compensation.

Conclusion

The tenants' application is dismissed.

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

Residential Tenancy Branch