



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

On January 13, 2020, 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*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with D.K. attending the hearing as counsel for the Landlord. The Tenant and the Landlord provided a solemn affirmation.

S.L. attended the hearing and advised that he was formerly acting as an agent for the Landlord, but that relationship ended as of March 31, 2019. He advised that his company should not be named as a Respondent to this hearing. As a result, the property management company that was named as a Respondent on this Application was removed from the style of cause.

The Tenant advised that she served the Notice of Hearing and evidence package to the address of the property management company by registered mail on January 15, 2020. While service of this package did not comply with Section 89 of the *Act*, the Landlord confirmed that this package was received, and D.K. advised that the Landlord was prepared to proceed despite service. As the Landlord had received this package and was prepared to proceed, I am satisfied that the Landlord was served the Notice of Hearing and evidence package. As such, this evidence was accepted and considered when rendering this Decision.

D.K. advised that The Landlord's evidence was served to the Tenants by email on or around May 27, 2020 and served in person via process server on May 28, 2020. The Tenant acknowledged that they received this evidence on those dates. As this evidence was served pursuant to the timeframe requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenants were served with the Landlord's evidence. As such, this evidence was accepted and considered 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 started on May 1, 2015 and ended when the Tenants gave up vacant possession of the rental unit on March 31, 2019. Rent was established at \$2,120.00 per month and was due on the first day of each month. A security deposit of \$1,000.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties agreed that the Tenants were served with the Notice in person on January 29, 2019. The reason the Landlord checked off on the Notice was because "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 Landlord indicated on the Notice that the effective end date of the tenancy was March 31, 2019.

The Tenant submitted that the Landlord or the Landlord's close family member did not move in and occupy the rental unit within a reasonable time after the effective date of the Notice. She stated that the Landlord acknowledged commencing renovations and building a basement suite after the effective date of the Notice, which is contrary to the reason the Notice was served as this was not for personal use. Furthermore, she stated that the Landlord's parents only moved into the rental unit on May 22, 2019 and that they then moved out August 6, 2019. She referenced the Landlord's acknowledgement that he moved into the rental unit on September 9, 2019 because he was taking a course and then the Landlord listed the property for sale in October 2019. She advised that it is her belief that the cumulative total from when the Landlord's parents moved in in May 2019 combined with the days that the Landlord lived there, to the time when the property was listed for sale, do not add up to six months. Therefore, the Landlord did not comply with the *Act* by using the property for the stated purpose or for the appropriate length of time. She referenced the real estate listing, that was submitted as documentary evidence, which showed that there was a basement suite that was built, and she cited letters that were submitted as documentary evidence to support her position that the Landlord or close family members did not occupy the rental unit pursuant to the *Act* after the effective date of the Notice.

D.L. advised that the Landlord's parents were granted permanent residence status on January 7, 2019 so the Landlord served the Notice on January 29, 2019 for an effective end of tenancy date of March 31, 2019. The plan was to sell his current home and move in with them into the rental unit. The Landlord's wife was subsequently offered a new job on April 23, 2019, so their plans changed and they elected not to sell their current home. After the effective date of the Notice, the Landlord conducted minor renovations to the rental unit and then his parents moved into the rental unit on or around May 22, 2019. The parents lived there with some other family members until August 8, 2019, when the parents returned to India to attend to a family situation. The Landlord suffered an injury on July 11, 2019, and after the parents moved out, he solely occupied the rental unit so that he could commute to work. He occupied this unit until it was sold in October 2019. After the effective date of the Notice, he or a close family member as defined by the *Act* occupied the rental unit until its sale in October 2019. D.L. advised that the rental unit was not sold or rented out after the effective date of the Notice, but it was owner occupied and he referenced utility bills, that were submitted as documentary evidence, to support that the bills fluctuated due to occupation. He advised that the Landlord is allowed to conduct renovations for his own use, that there is no law against listing the property for sale under the *Act*, and that the rental unit did not sell until October 2019.

The Landlord advised that after the effective date of the Notice, the purpose of the renovation was so that he and his parents could live there. He stated that he would stay in the rental unit periodically to eat, sleep, and shower as this property was more convenient for his commute to work. After his parents moved out, while this was not his primary residence, he still used the property to live in occasionally. He cited letters that were submitted as documentary evidence that support his position that he and his parents lived in and occupied the rental unit.

Analysis

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 Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

With respect to the Tenant's claim for twelve-months' compensation owed to her as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was dated January 29, 2019 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 Landlord advised that the intention was to have him, or a close family

member, move into the rental unit 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 Landlord 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 Tenant's concerns with respect to her doubts that the Landlord did not use the property for the stated purpose; however, the reason for the Notice was that the Landlord or close family member would occupy the rental unit. I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The first issue that I will address is the Tenant's claim that the Landlord did not occupy the rental unit as per the reason on the Notice. The consistent evidence is that renovations were conducted soon after the effective date of the Notice. While the Tenant claims that renovations conducted to the rental unit were not permitted as those are contrary to the purpose chosen on the Notice, I agree that there is a separate notice to end tenancy for renovations entitled Four Months' Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of a Rental Unit. However, this type of notice is primarily used for significant renovations that cannot be reasonably completed when the rental unit is occupied by a tenant.

The consistent and undisputed evidence here is that these renovations were not for a purpose other than to make the rental unit more accommodating for the occupation by the Landlord and/or his close family members to occupy. Thus, I find it entirely reasonable that the Landlord be permitted to conduct renovations to the rental unit, once they gain vacant possession, to make it more suitable for their own habitation. As such, I am not satisfied of the Tenant's submissions that these actions of renovations were contrary to the stated purpose. Furthermore, as these renovations were initiated soon after the effective date of the Notice, I am satisfied that the Landlord complied with the *Act* by taking occupation of the rental unit and preparing it for occupation.

The second issue I will address is the Tenant's claim that the Landlord or a close family member did not occupy the rental unit. While the Tenant provided two letters as documentary evidence to support her position that neither the Landlord nor close family members moved in within a reasonable time after the effective date of the Notice, as above, I am satisfied that the Landlord took occupation of the rental unit soon after the

effective date of the Notice and prepared it for occupation. Furthermore, I have the Landlord's affirmed testimony that he would stay in the rental unit on occasion, and I also have witness letters before me confirming that the Landlord's parents also moved into the rental unit in May 2019. As the burden of proof is on the Tenant to prove this claim, I find that she has not provided sufficient evidence to support that the Landlord did not occupy the rental unit after the effective date of the Notice, nor did she prove on a balance of probabilities that the Landlord or a close family member did not occupy the rental unit either.

Finally, the third issue I will address is the Tenant's claim that the Landlord or a close family member did not use the property for the stated purpose for at least six months after the effective date of the Notice. As already determined above, I am satisfied that the Landlord complied with the *Act* by occupying the rental unit after the effective date of the Notice by conducting renovations for his habitation, and then occupying the rental unit, along with his parents, after the effective date of the Notice. Furthermore, there is evidence that the Landlord continued to occupy the rental unit after his parents moved out in August 2019. While the Tenant claims that the Landlord did not use the rental unit for the stated purpose for at least six months and it was then sold within this timeframe, I find it important to note that it was the Tenant's belief that this six month requirement was a cumulative total of the time she believed the Landlord or the Landlord's parents physically occupied the rental unit. However, the *Act* requires that the Landlord use the property for the stated purpose for at least six months from the effective date of the Notice. As I am satisfied that the Landlord and/or Landlord's close family members occupied the rental unit from the effective date of the Notice until it was sold in October 2019, and as this time from the effective date of the Notice to the sale exceeded six months, I do not find that the Tenant has provided sufficient evidence to support her claims.

While the Tenant has provided much evidence and testimony about her doubts that the rental unit was occupied for the stated purpose and for the required length of time, when weighing her evidence against the Landlord's, I do not find that the Tenant's evidence is persuasive or compelling enough to corroborate her claims. Therefore, on a balance of probabilities, I am satisfied that the Landlord used the property for the stated purpose, for the required timeframe, and that he did not contravene the *Act* in this circumstance. As such, I am satisfied that the Tenant is not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*. I dismiss her 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: June 17, 2020

Residential Tenancy Branch