



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FFT

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act (Act). The tenants applied for:

- a monetary order for money owed or compensation under the Act; and
- for recovery of the filing fee paid for this application.

The tenants, the landlord, and his spouse/witness attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence in advance of the hearing.

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

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues 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 landlord and to recovery of the filing fee paid for this application?

Background and Evidence

The tenants submitted there was no written tenancy agreement; however, they said the tenancy began in January 2015 and the monthly rent at the beginning and end of tenancy was \$950.

The tenants submitted that they vacated the rental unit on November 5, 2019, by the terms of the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice), issued to them by the landlord.

This Notice was dated September 4, 2019, was signed by the landlord, served on the tenants on that date by attaching it to the tenants' door, and listed an effective move-out date of November 4, 2019. Filed into evidence was a copy of the Notice.

As a reason for ending the tenancy, the Notice listed that the rental unit will be occupied by the landlord or a close family member (parent, spouse or child, or the parent or child of that individual's spouse).

The tenants submitted further that they chose to accept that the tenancy was ending as they vacated the rental unit by November 5, 2019, without filing an application to dispute that the Notice was valid.

In support of his application, the tenants submitted that rather than move into the rental unit, the landlord is using the rental unit as an AirBnB vacation rental property.

In explanation, the tenant submitted that he was informed about a listing for the home, which was put on Facebook market place. Filed into evidence was the undated posting.

The tenants submitted they are entitled to compensation equivalent to 12 months' rent, as the landlord has not used the rental unit for the stated purpose listed on the Notice, in the amount of \$11,400.

Landlord's response-

The landlord submitted that his primary residence is the home which is the former rental unit, explaining that as he and his spouse have separated, he lives in the former rental unit. The landlord submitted that his spouse lives in another town with their children and he travels as often as he can to see his children and attend marriage counseling.

The landlord submitted that he quit one job to get another, to be closer to his children, with the new job requiring business-related travel.

The landlord submitted that due to the financial pressures of supporting two households, and the fact he does not live full time in the home, he decided to have short term vacationers stay in the home while he was traveling. The landlord submitted also that as there is an upper and lower suite, he can accommodate short term renters even while he is there. The landlord explained the home is in a popular vacation area.

The landlord said he stays in his home multiple weeks per month and he schedules his project work weeks in advance, so it is possible to schedule vacationers.

The landlord submitted travel itineraries, one showing that both his children will be with him over school spring break and returning to their mother on March 26, and another showing he was on a Mexican vacation for 2 weeks, and would not need the house during that time. The landlord submitted that guests have not stayed longer than 5 days at a time.

The landlord submitted a copy of his home-owner's insurance showing it was for residential use and not as a rental, a resignation letter to his former employer, and random Facebook messages.

Landlord's witness –

The landlord's spouse confirmed the evidence and testimony of the landlord, that the rental unit was the landlord's primary residence and that he travels for work and visiting the children.

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, who claim the landlord has not used the rental unit for the stated purpose listed on the Notice, have the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In the case before me, 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 the rental unit will be occupied by the landlord or a close family member (parent, spouse or child, or the parent or child of that individual's spouse).

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 tenant.

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.

The Notice, in this case, is not effective earlier than two months after the date the tenants receive the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, two clear calendar months before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of

the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date of November 4, 2019, is changed to November 30, 2019.

The definition of “occupy” as provided in *Black’s Law* dictionary defines “occupy” to include: to hold possession; and to hold or keep for use. As the Act does not provide a definition, I defer to the legal definition.

In this case, I find the landlord provided clear, consistent, and compelling evidence that he moved into the rental unit after the tenants vacated and has used the home as his primary residence. In this case, I find the landlord has provided compelling evidence that while he does not live in the rental unit full time, I find a reasonable explanation is he is away for periods of time each month for work travel and to spend time with his children who live in another town. The tenants failed to dispute this evidence.

I was persuaded by the landlord’s evidence, which included his travel itineraries, work resignation letter, and vacation rental listings. One text message communication from a potential short-term renter informed the renter that the owner lived in the property.

Nothing in the Act prohibits owners from renting out their homes, or a part of their home, for vacation stays, while the owner is away temporarily for part of a month, or even while the owner is there, if there is a separate suite, as is the case here.

On the other hand, I found the one, undated Facebook posting submitted by the tenants, was not compelling or persuasive to show the landlord was not living in the rental unit.

Overall, I find on a balance of probabilities that the landlord moved into the rental unit after the tenants vacated and has lived there and used it for his primary residence since that time.

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, without leave to reapply.

Conclusion

For the above reasons, due to their insufficient evidence, I have dismissed the tenants' application in full, 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 26, 2020

Residential Tenancy Branch