



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 by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 51(2) and section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord attended with the lawyer BC ("the landlord"). The tenant DF attended for both tenants ("the tenant"). The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

The tenant confirmed that AA was not a tenant and requested an amendment accordingly. The amendment is granted and all proceedings are accordingly amended.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 51(2) and section 67 of the *Act*;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed as follows. The tenancy began on October 1, 2013 for monthly rent of \$1,600.00 payable on the first of the month.

The landlord lived on the main floor of the building which she owns. The unit is the upstairs apartment where the tenants resided – a wife, husband and one child. The two apartments share a front door which leads to a foyer and separate doors for each apartment. There is only one mailing address for both apartments.

The landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice", or "Notice"). A copy of the Notice was submitted which is in the standard RTB form. It stated the following as grounds for ending the tenancy:

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 tenant chose not to dispute the Notice and vacated the unit on October 31, 2019. The tenant received the statutory required compensation equivalent of one month's rent.

The landlord acknowledged that the landlord's niece, the niece's husband, and their 4-year old child ("the niece's family"), moved in to the unit within a few days of the tenant moving out.

The tenant asserted that the niece is not a "close family member" as defined in the Act. Therefore, as the landlord has not complied with the conditions of the Act under which a Two-Month Notice may be given, the landlord must pay 12 months rent to the tenant under section 51(2).

The landlord testified that her niece and family moved in to the unit right away after the tenant vacated; since then, both the landlord's apartment and the unit have been joined into a multi-generational single living unit. The landlord stated that she has "reclaimed it [the unit] and integrated it into her living accommodation"; the landlord and her niece's family now "concurrently possess" both units.

Therefore, the landlord claimed that she has complied with requirements in the Act and the tenant's application should be dismissed.

The landlord testified to the arrangements between her and the niece's family. The landlord testified that the niece's family do not pay rent but they instead "pool and share" the landlord's expenses in running both households and paying for outlays for the building. There is no tenancy agreement. The landlord stated it is their intention that her niece will care for her as she "ages in place" and the landlord has bequeathed the building to the niece. There is no plan for the niece's family to move out.

The landlord submitted many arguments in testimony as well as written submissions in support of the landlord's assertion that the landlord now occupied the unit along with the niece's family. These assertions were supported by letters from the niece, her husband and a friend. Key factors claimed by the landlord were as follows:

1. The landlord and the niece's family come and go as they please throughout the combined unit with all doors unlocked;
2. No rent is paid;
3. There is no tenancy agreement;
4. They periodically share making meals in either kitchen;
5. They share storage areas, such as the garage;
6. They share duties such as gardening;
7. They use both decks interchangeably;
8. While each person has privacy in separate bedrooms, all other space is shared by everyone without restriction.

In reply, the tenant asserted they were only ever told by the landlord that the niece and her family were moving in to the unit. The tenant claimed that the landlord's argument that she now occupies both units was fabricated to contort the facts to fit the law after the tenant filed for dispute resolution.

In support of this claim, the tenant referred to a letter of July 22, 2019, a copy of which was submitted. The landlord wrote to the tenant saying they had to move out as the niece's home was sold. The letter stated in part as follows (as written):

This leaves my niece C and her family homeless after October 31, 2019. C and her family will need to move into my home at this time. Unfortunately to accomodate them we will require the space you now rent. I am giving you three

months notice to vacate your suite by November 1st 2019. I am very sorry for the inconvenience to you ...

In a letter of October 29, 2020, a copy of which was submitted, the landlord wrote to the tenant stating in part:

My niece C. and her family need to live with me as they are unable to pay rent at this time and for the foreseeable future.

The landlord testified that she has a medical condition which could benefit from caregiving which the niece will provide. The landlord submitted a medical letter to this effect, a copy of which was submitted.

The landlord testified that she did not reference the planned joining of the households in her conversations and correspondence with the tenant as she viewed her plans as private information. As well, the parties' relationship soured in the time before the tenant vacated.

The tenant requested monetary compensation equal to 12 months rent. The landlord requested that the tenant's claim be dismissed without leave to reapply.

Analysis

Each party submitted written arguments and the landlord referred to several RTB cases. The lengthy 86-minute hearing included considerable disputed evidence. While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here.

The relevant and important aspects of the claims and my findings are set out below.

Compensation and Burden of Proof

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 must do whatever is reasonable to minimize or mitigate 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 and order that party to compensate the other party.

The tenant claims the landlord, or a close family member as defined in the Act, did not occupy the unit. The tenant has the burden of proof to substantiate their claim on a balance of probabilities, that is, something is more likely to be true than not.

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.

Background

The parties agree that the tenant was issued a Two Month Notice 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).

The landlord claimed she now occupies both her own apartment and the unit in a combined household with her niece and family. This is denied by the tenant.

Legislation

Section 49 of the Act allows a landlord to end a tenancy in certain situations. For example, the landlord may end the tenancy if the landlord intends, in good faith, to occupy the rental unit.

Policy Guideline 2(a) *Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member* states in part as follows (emphasis added):

[A] landlord can end a tenancy to move into the rental unit if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation *or as part of their living space*.

The landlord must “occupy” the rental unit for six months starting within a reasonable time after the tenancy ended to fulfill the purpose stated in the Notice that was served upon the tenant.

If the landlord does not comply with section 49, section 51 provides that the landlord

must pay to the tenant an amount equivalent of 12 times the monthly rent. Section 51 states in part as follows:

(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.

(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.

A landlord can end a tenancy and reclaim a rental unit as part of their living accommodation. The *Guideline* states in part as follows (emphasis added):

If a landlord has rented out a rental unit in their house under a tenancy agreement (for example, a basement suite), *the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation.*

For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy *if the landlord plans to use the basement as part of their existing living accommodation.*

Examples of using the rental unit as part of a living accommodation may include

using a basement as a second living room or using a carriage home or secondary suite on the residential property as a recreation room.

As stated earlier, the landlord testified her living accommodation expanded to include the unit when the tenant moved out; the landlord's niece and family moved in to the integrated space so that they could live as a large family, care for the landlord, and eventually inherit the house.

In reply, the tenant asserted that the niece is not a "close family member" and the landlord never intended to occupy the unit and has not done so.

Credibility and Weight of Testimony/Evidence

In assessing the weight of the testimony and evidence, I found the landlord credible and sincere. I found the landlord's testimony, which was supported in all key aspects by documentary evidence, to be persuasive and believable.

While the tenant's testimony was credible about the circumstances leading up to the tenant moving out, I find the tenant did not have all the information about the landlord's plans for the unit.

I accept the landlord's explanation as reasonable that the landlord viewed her health and care needs as private; the landlord did not share her plans with the tenant that she, the landlord, intended to occupy the unit with her niece and family. As a result, the tenant's understanding was limited about the planned arrangements between the landlord and the niece's family.

As a result of my assessment of the credibility of the parties, I gave greater weight to the landlord's account; where the evidence of the parties' conflict, I prefer the landlord's version of events.

Findings

In this case, I find the landlord provided clear, consistent and believable evidence that her living accommodations expanded to include the rental unit after the tenant vacated and that she and her niece's family have used the two apartments as their primary integrated residence. I find she has reclaimed the unit as part of her living accommodation. I am persuaded by the landlord's evidence, which included written supporting letters from her niece, the niece's husband, and a friend.

I acknowledge that the tenant was not aware of the landlord's and her niece's plan. However, I find that this does not lead me to a conclusion that the landlord did not intend to occupy the unit.

I find on a balance of probabilities that the landlord moved into the unit along with her niece's family after the tenant vacated and their families have joined together, or merged their households. I find the combined units are now one home used and shared by both families jointly and without restriction. I find the landlord issued the Notice in good faith. I find she has occupied the unit since shortly after the tenant vacated and has done so continuously ever since.

As a result, I find the tenant has not submitted sufficient evidence to support their application for monetary compensation. I find the tenant has failed to meet the burden of proof with respect their claim.

Therefore, I dismiss the tenant's application for compensation and for recovery of their filing fee without leave to reapply.

Conclusion

The tenant's application is dismissed 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: October 24, 2020

Residential Tenancy Branch