



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

The tenant and both landlords attended the hearing, and the tenant was accompanied by an Advocate. The tenant and one of the landlords gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided by the parties has been reviewed and is considered in this Decision.

Issues to be Decided

Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation for the landlords' failure to use the rental unit for the purpose contained in a notice to end the tenancy for landlord's use of property?

Background and Evidence

The tenant testified that this tenancy began on July 1, 2018 and ended on August 8, 2019. Rent in the amount of \$850.00 per month was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$425.00 which has been returned in full to the tenant. The rental unit is a self-contained basement suite, and the landlords did not reside on the property; there were about 7 other tenants in the building, but the tenant was the only occupant of the basement suite.

The tenant was not offered to sign a written tenancy agreement and was not aware that any existed. The tenant questioned it and asked the landlord to send a copy that he had about 6 months later, out of curiosity. The copy of the tenancy agreement provided by the landlord does not name the tenant, and the tenant was not given a tenancy agreement. The tenant was told to pay his rent and security deposit, which he did to the landlords.

The landlords provided a letter to the tenant on May 26, 2019 telling the tenant that he had to vacate for landlords' use of property, which was effective July 31. It was not a proper notice to end the tenancy, and the tenant rejected the letter, wanting a formal Two Month Notice to End Tenancy for Landlord's Use of Property.

The tenant further testified that in July, 2019 the landlords served a Two Month Notice to End Tenancy for Landlord's Use of Property by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated July 8, 2019 and contains an effective date of vacancy of September 30, 2019. The reason for issuing it states: "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 gave notice to end the tenancy earlier than September 30, 2019 in an email, and a copy has been provided for this hearing. The tenant attempted on August 1 to pay partial rent for August 1 to August 8, but the e-transfer was not accepted by the landlord, who offered it to the tenant as a gift. Copies of the email and text messages have been provided for this hearing.

Between August 1 and August 8, 2019 the landlords were not occupying the rental unit. The tenant also found evidence that the landlords were selling the property. A copy of the MLS listing has been provided for this hearing, as well as a State of Title Certificate showing that Land Titles received the application on January 30, 2020 and entered February 3, 2020. New owners moved in on January 31, 2020. The tenant has also provided a recording and testified that the new occupants are recorded on that clip saying that they are not related to the landlords and have lived in the home for about half a year.

The tenant claims 12 times the monthly rent, or \$10,200.00 and recovery of the filing fee.

The landlord testified that only 1 tenant would sign the tenancy agreement and to the landlord, everyone else was a roommate. There were people coming out and replaced roommates on their own. The landlords received rent from one person for all tenants totaling \$5,200.00 per month.

The landlords did not like the location of their previous home, and had a house of their own so decided to relocate. The landlord's father gave a formal letter to the tenant who signed

the tenancy agreement, not knowing that he had to use an approved form. The tenant who signed the tenancy agreement accepted the formal letter under the circumstances of receiving 1 month's rent as compensation. No one was to pay rent for July, 2019 and all would move out on July 31, 2019. All occupants of the upper portion of the house vacated at the end of July. The landlords wanted a hassle free event, and did what the tenant in the basement suite wanted so that he was covered under the *Residential Tenancy Act*, in order to get the compensation, and the landlords served the Notice.

On August 9, 2020 the landlords moved in and took over the entire house effective August 1, 2019 and then the landlord occupied the suite after the tenant moved out. The family lived in the 2 bedroom suite, crammed in there and then the landlord moved into the tenant's basement suite.

When the landlords gave the notice to end the tenancy for the upper portion of the house, the landlord thought the tenants would leave it in a livable condition, and assumed they'd clean it up in order to be able to recover the security deposit. Photographs of the upper portion of the home have been provided for this hearing. The upper portion of the house was completely destroyed and the landlords could not afford to fix it up, so they sold it. The listings show the date of sale of October 26, 2019, and the buyer gave a completion date of February 1, 2019 due to moving out of their previous house. The possession date for new owners was January 31, 2020. A copy of the partial Statement of Adjustments has been provided for this hearing. It was about a week less than 6 months, but if the tenant had agreed to move out when the letter was delivered it would have been a full 6 months, but the tenant didn't agree. When the letter was given to the tenant named in the tenancy agreement on May 26, 2019, he said he was speaking on behalf of the entire house, and the landlord wasn't aware until August 1 that the tenant in the basement suite wasn't complying.

The landlord testified that he continued to pay the hydro to February 3, 2020. The landlord and his mother, father, grandmother and a sister moved in and the landlords intended to live there for years to come. There were 7 bedrooms and 5 people in the landlords' family to occupy it. The landlord's mother wanted space for the landlord's grandmother, and the landlord moved into this rental unit on August 9. His grandmother moved into the other 2-bedroom basement suite.

TENANT'S SUBMISSIONS:

The tenant's Advocate submits that the question is simple: did the landlords occupy the rental unit for at least 6 months? "At least" means not less than and must be more than. The tenant moved out on August 8 and the landlord moved in on August 9 and sold the home in less than 6 months. It's acknowledged that Arbitrators are not bound but a similar

case Decision has been provided for this hearing which ruled that landlords must use the rental unit for the stated purpose, and based on spirit of the *Act* and context of the *Act*, the landlord must stay more than 6 months and must act in good faith. The Minister of Housing, when compensation was raised, was done so to prevent landlords from ending tenancies for an unlawful purpose. In this case, the landlords listed the home for sale within 2 months of the tenant vacating, not in good faith, which is what the *Act* was attempting to avoid.

LANDLORDS' SUBMISSIONS:

The landlord submits that the landlords' family lived in the rental unit for 6 months, and due to damage, the landlords couldn't afford to stay long-term although they intended to. The tenant didn't sign a tenancy agreement but forced the landlords to give a proper notice to end the tenancy even though others did not require it. It's been 6 months and 1 day since the other tenants moved out. It was 5 months and 24 days since this tenant vacated. If the landlords knew a week earlier what the tenant would come after, the landlords would have postponed the possession date. The landlords thought the tenant was acting in good faith and already had a place. He didn't sign the tenancy agreement, rejected the first notice to end the tenancy, and prepared another place to live and still wanted compensation.

Analysis

Firstly, I have reviewed the tenancy agreement, which specifies the address of the rental unit, rent in the amount of \$5,200.00 payable on the 1st day of each month, and what is included in the rent. The address for service of the landlord has been left blank. It also states: "All tenants paid the owner ½ rent for damage deposit." The parties agree that the tenant paid a security deposit directly to the owner. The landlord testified that the tenant who signed the tenancy agreement said that it was for the entire house, but I am not satisfied that the tenant was aware of that.

The *Residential Tenancy Act* specifies that a tenancy exists even if not in writing. I also refer to Residential Tenancy Policy Guideline #9 – Tenancy Agreements and Licences to Occupy, which states, in part:

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and

- the tenant pays a fixed amount for rent.

In this case, the tenant has exclusive possession of the rental unit in question and paid a security deposit to the landlords and paid a fixed amount of \$850.00 for rent. Therefore, I find that a tenancy existed.

The *Act* also sets out how a tenancy ends, and in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property the landlord must use the rental unit for the purpose contained in the Notice for at least 6 months.

The landlord suggests that the tenant ought to have moved out earlier, given that the other tenants did so based on the "formal notice." It was not a formal notice at all, but simply a letter. I accept that the landlords did not know that an approved form was required, however since a tenancy existed, the landlords were obligated by law to serve the approved form, and the landlords were also obligated to do so in good faith.

Policy Guideline #50 – Compensation for Ending a Tenancy, sets it out very well, as follows:

C. ADDITIONAL COMPENSATION FOR ENDING TENANCY - LANDLORD'S USE

"Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only).

Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances. The arbitrator has no authority to vary or alter the amount of compensation."

In this case, the effective date of vacancy contained in the Two Month Notice to End Tenancy for Landlord's Use of Property is September 30, 2019. The landlord testified that he occupied the tenant's suite commencing August 9, 2019, the day after the tenant vacated. The landlords then listed the rental home for sale commencing on October 26, 2019, and the landlords moved out on February 1, 2020. That is not at least 6 months occupancy.

The landlord claims that extenuating circumstances existed and has provided photographs of the upper portion of the rental home, and testified that it was not in livable condition, the landlords could not afford to complete the repairs, and sold the home. I have reviewed the photographs provided by the landlords, which appear to show that the tenants didn't actually vacate, with personal belongings remaining in every room, including furniture. I do not accept the testimony of the landlord that the landlords could not afford to make the upper level of the home livable; I highly doubt that the landlords left the numerous items in the home for the purchasers to deal with. There is no damage visible except for perhaps cleaning, carpet cleaning or replacing and perhaps painting. I do not accept that extenuating circumstances existed or that the upper level of the home was unlivable preventing the landlords from using the rental home for the purpose contained in the Notice.

I find that the tenant has established a monetary claim as against the landlords for 12 months rent, or \$10,200.00.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$10,300.00.

This order is final and binding and may be enforced.

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: November 17, 2020

Residential Tenancy Branch