



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 the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The "male tenant" did not attend this hearing, which lasted approximately 81 minutes. The landlord owner SM ("landlord"), the "landlord's agent," and the female tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord owner confirmed that he was the owner of the rental unit and that the landlord company named in this application was his former property management company. He stated that the landlord's agent had permission to speak on his behalf, but she did not testify at this hearing. The landlord's agent confirmed that she was the property manager for the landlord company named in this application and that she had permission to represent it. The tenant confirmed that she had permission to represent the male tenant at this hearing (collectively "tenants").

Two witnesses, "witness SS" and "witness MA," testified on behalf of the tenants. One witness, "witness MQ," testified on behalf of the landlord. All three witnesses were excluded from the outset of the hearing and called back in later. Both parties had equal opportunities to question all three witnesses.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenant was duly served with the landlord's evidence.

Both parties verbally confirmed that they were ready to proceed with the hearing.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2018 and ended on September 30, 2019. A written tenancy agreement was signed by both parties. Monthly rent of \$1,641.00 was payable on the first day of each month. The rental unit is the basement of a house, with an upper level.

Both parties agreed that at the request of the landlord, the landlord's agent issued a Two Month Notice to End Tenancy for Landlord's Use of Property, dated July 28, 2019 ("2 Month Notice") to the tenants. The tenant confirmed receipt on the same date. Both parties agreed that the notice had an effective move-out date of September 30, 2019 and that the tenants received one month of free rent for September 2019, pursuant to the notice.

A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the reason indicated on the notice is:

- *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 seek compensation under section 51(2) of the *Act* for 12 months' rent compensation of \$1,641.00, totaling \$19,692.00, plus the \$100.00 filing fee. The landlord disputes the tenants' entire application.

The tenant stated the following facts. The tenants vacated the rental unit pursuant to the landlord's 2 Month Notice for the landlord or his close family member to occupy the rental unit, which was not done. The landlords did not move into the rental unit at all, he re-rented it to new tenants. The tenant and her mother, witness SS, went to visit the rental unit to serve the landlord with RTB hearing documents on December 24, 2019. A male tenant answered the door and said that he did not know who the landlord was or where the landlord was and claimed that he was renting the unit since November 2019. The neighbour on one side of the rental unit, witness MA, said that the landlord never moved into the rental unit. The tenant sent mail to the rental unit on December 27, 2019, and it was not picked up by the landlord. The neighbour on the other side of the rental unit, who did not testify at this hearing, told the tenant that the landlord did not move in and there were new tenants living at the rental unit.

The tenant testified regarding the following facts. The landlord provided two false tenancy agreements, one for the upper level and one for the rental unit. The landlord posted online advertisements to rent the upper level of the house at \$2,250.00 but then claimed in his tenancy agreement that his new occupants were paying \$1,550.00 to rent a four-bedroom upper level of a house, which did not make sense because it is such a cheap price. On December 22, 2019, the landlord posted an advertisement for the rental unit at \$1,600.00 per month but claimed that the price was negotiable. The tenant thinks that the new tenants were living in the basement for \$1,550.00 per month, not on the upper floor, as claimed by the landlord in his false tenancy agreement. On February 5, 2020, the landlord sent text messages to the tenant to say that he was living in Toronto. The landlord told the tenant that she was vacating the rental unit of her own free will, and she could only stay if she paid utilities, but that the landlord wanted to move into the rental unit. The landlord still blames the tenant for a previous plumbing dispute at the RTB, he withheld the tenants' security deposit at another RTB hearing, and he pursued a wrongful eviction of the tenants. The tenant dealt with the landlord's agent, not the landlord, during this tenancy.

Witness SS testified regarding the following facts. She is the tenant's mother. She went with the tenant to the rental unit on December 24, 2019, to serve RTB papers to the landlord. A young male answered the door, claimed that he had been living there for awhile, and said that the landlord did not live there. The tenant also spoke to the neighbour, witness MA, on the same day.

Witness MA testified regarding the following facts. He knows the tenant while she was living at the rental unit because he used to check on her place when she was frequently in the hospital with her newborn. When the tenant moved out, she told him that the landlord was supposed to move into the rental unit. He does not know when the tenants moved out. After the tenants moved out, the landlord's wife tried to open a daycare, she did not have a license to do so, and there were three to five cars in witness MA's driveway causing a backup, because of the daycare. Witness MA called and complained about the backup and the unlicensed daycare and had it shut down. Less than 1.5 months after the tenants moved out, a new couple, their little girl, and their black dog told witness MA that they moved into the rental unit. The landlord never moved into the rental unit but was living on the upper floor of the same house. Witness MA did not go inside the rental unit between October 2019 and May 2020. He cuts the grass for the new tenants since the summer of 2020.

The landlord stated the following facts. He asked his agent to give the tenants a 2 Month Notice to move out of the rental unit, so that he and his family could move in. He moved to Canada from a different country and needed somewhere to live. He has two houses, of which one is the rental property. His wife wanted to open a daycare. When the tenants in his second house broke the lease and left early, he sent text messages to the tenant and his agent, asking the tenant to stay which cancelled the 2 Month Notice. He told the tenant that if she moved out, it would be of her own free will. The tenant told the landlord's agent that she wanted to move out because her own trailer was complete so she would be moving there. He sent text messages to the tenant in August 2019, asking her to stay, and she did not respond to the landlord or his agent.

The landlord testified regarding the following facts. After the tenants vacated, he lived at the rental unit from October 1, 2019 to May 1, 2020 with his wife and children. He travels for work and lived in Toronto for 1 to 1.5 months, while his wife and children were still living at the rental unit, but otherwise he has lived at the rental unit during the above time. On December 24, 2019, he was home and the tenant never came to see him to serve RTB papers. The upper level tenants were out of town for the whole week during this time. The tenant's friend, witness MA, used to fight with his wife and the parents of the daycare children. The neighbour on the other side of the house did not talk to the tenant. On May 1, 2020, the upper level tenants, who were paying \$1,550.00 per month to live upstairs, moved downstairs into the rental unit.

Witness MQ testified regarding the following facts. She is the landlord's wife. She is aware that the tenants were issued a 2 Month Notice to vacate, for the landlord to move into the rental unit. She moved into the rental unit with the landlord and her children from October 1, 2020 to May 1, 2020, when her family then moved upstairs in the same house. During her time in the rental unit, she opened a licensed daycare, to expand her previous unlicensed daycare. The landlord travels for work but she was still living in the rental unit with her children, when he was out of town, but he returned to live there when he was not travelling. When she moved out of the rental unit, the upper level tenants moved downstairs into the rental unit.

Analysis

I note that both parties submitted voluminous documents and evidence for this hearing. However, neither party went through their documents in any detail, nor did they point me to any specific pages or provisions. They simply referenced that they had provided advertisements, letters, emails, and text messages for this hearing. This hearing lasted approximately 81 minutes, of which the tenant and her two witnesses spoke for the majority of the hearing time, at approximately 49 minutes, as compared to the landlord and his one witness at approximately 27 minutes.

Section 49(3) of the *Act* states that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member intends in good faith to occupy the rental unit.

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) 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.

I make the following findings, on a balance of probabilities, based on the testimony and evidence of both parties. The tenants vacated the rental unit on September 30, 2019, pursuant to the 2 Month Notice. I find that the tenants vacated pursuant to the notice, since they left on the effective date in the notice and they received the one-month free rent compensation, indicated in the notice.

I accept the affirmed testimony of the landlord and witness MQ that the landlord, his wife and children moved into the rental unit from October 1, 2019 to May 1, 2020, a period of seven months, which meets the minimum six months requirement under the *Act*. Although the landlord traveled for work and lived in Toronto for a 1 to 1.5 month period in February 2020, his spouse and children were still living at the rental unit during this time, which qualifies under the 2 Month Notice. Even the tenant's witness MA confirmed that the landlord's wife was running a daycare from the rental unit for 1.5 months after the tenants moved out because he made complaints against her clients and said he had the daycare shut down. Although witness MA may have been running a daycare from the rental unit, I find that the landlord and his family primarily used this as a residential space.

I find that the tenants did not provide sufficient evidence that the landlord and his family did not live at the rental unit or that there were new occupants living there after the tenants vacated. I do not find the testimony of witness MA to prove that new occupants were living at the rental unit because he did not go inside the rental unit at any time between October 2019 and May 2020. He also did not know when the tenants moved out or when any new occupants allegedly moved into the rental unit. He said that he cut the grass for the new occupants in summer 2020, which the landlord agreed those occupants had moved into the rental unit from the upstairs unit, on May 1, 2020. I do not find the tenant's or witness SS's testimony, about an isolated incident on December 24, 2019, to prove that other occupants were living at the rental unit after the tenants moved out. Apparently, this occupant did not know who the landlord was or where he was. The landlord denied this incident occurred and the tenants did not have these new occupants testify at this hearing to confirm same. I do not find the tenant's speculative testimony or reference to rental ads, to confirm that other occupants were living at the rental unit after the tenants vacated.

Therefore, I find that the landlord used the rental unit for the reason indicated in the 2 Month Notice. I find that the landlord, his spouse and children moved into the rental unit and occupied it for more than six months. I dismiss the tenants' application for 12 month's rent compensation of \$19,692.00, without leave to reapply.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' entire 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: November 6, 2020

Residential Tenancy Branch