



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 tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord RG attended on behalf of both landlords. The landlord SG attended the hearing briefly and provided testimony. LZ attended for the tenants ("the tenants"). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch rules of procedure. 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 the relief claimed?

Background and Evidence

The tenants provided testimony that the tenancy began seven years ago, and they paid rent of \$1,000.00 monthly. The unit is a 2-bedroom apartment in the lower floor of a house. The lower floor also contained another apartment. The tenants provided a security deposit of \$350.00 at the beginning of the tenancy.

The landlord testified they purchased the property taking possession on May 20, 2020. The previous owner served a Two Month Notice to End Tenancy for Landlord's Use of Property from the Landlord ("the Two Month Notice") on the last day of February 2020 with an effective date of April 30, 2020 when the tenants moved out.

The reason cited for ending the tenancy is as follows:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchase or a close family member intends in good faith to occupy the rental unit.

The Two Month Notice provides information for tenants who receive the Notice. The Notice provides that a tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a tenant does not file an Application within 15 days, the tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

The tenants accepted the Two Month Notice and moved out of the rental unit by April 30, 2020. The tenants testified that the landlord did not move into the rental unit and use the property for a six-month period.

The tenants also testified that the landlord advertised the rental unit in July 2020 for \$1,400.00 plus utilities, which is more than the rent paid by the tenants (\$1,000.00 including utilities). The tenants provided a copy of an advertisement for the rental unit that shows the unit as being "available immediately" on the advertised terms.

The tenants filed this application on August 20, 2020.

The landlord testified as follows. They stated that the entire house, including the two downstairs apartments, were opened into one large living space. The male and female landlords, brother and sister, occupied the house with their two siblings, the spouse of one of the siblings, a cousin and their two parents. The living room of the unit itself was

converted into a games/entertainment room and was available for use by to all occupants and guests of the landlord. The male landlord occupied one of the bedrooms in the unit and a cousin occupied the other.

The landlord testified they purchased the house because of scheduled weddings each of which involved 9 or 10 days of festivities. The house would be used for some of the planned celebrations. Members of the extended family planned to visit from other countries and the house would be available for them to use as guests.

However, because of the pandemic, the weddings were rescheduled. As well, the male landlord was in an accident and moved upstairs in July 2020 where he could more easily be carried for. His ability to work was affected. The living room of the unit continued to be used as a games/entertainment room.

The landlord explained as follows in their written submissions:

At the beginning of June we made the difficult decision to rent the suites for November 2020 and engaged a Property Manager. An agreement was signed, which included information that we wanted the suite to be rented for after November 2020.

The advertisement referred to in [tenants'] application was an error by the Property Manager, and was corrected. Regardless, we would not have been in the position to rent this property because the house was being used for a wedding.

The landlord submitted a copy of a property management agreement which included a term that the unit would be advertised for rent in November 2020. The landlord testified that the unit has never been rented out since the tenants left and is still being used by the landlord and extended family.

The male landlord attended for a brief time during the hearing, explained he is not well, and confirmed the female landlord's testimony.

Analysis

Section 49 of the Act provides circumstances where a landlord can end a tenancy for the landlord's use of the property.

Section 49 (3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(5) of the Act provides that a landlord may end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, and:

- all the conditions on which the sale depends have been satisfied, and
- the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 51 (2) of the Act provides:

*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.

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a landlord to end a tenancy under section 49, if the landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property. The Guideline provides that a landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Extenuating Circumstances

With respect to extenuating circumstances, the Guideline #50 provides the following:

An arbitrator may excuse a Landlord from paying compensation if there were extenuating circumstances that stopped the Landlord from accomplishing the purpose or using the rental unit.

The Guideline also provides circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn't notify the landlord of any further change of address or contact information after they moved out.

The Guideline provides that the following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

Compensation under section 51 of the Act

Based on all the above, the evidence and testimony from the landlord and tenants, and on a balance of probabilities, I find as follows:

I find the landlord used the rental property for the reason stated within the Two Month Notice for a six-month duration. I find their evidence credible that the unit was used by the landlord as a games/entertainment room as well as sleeping accommodation for the male landlord. I accept the testimony of both landlords that the decision was made in June 2020 to rent the unit in November 2020; this is evidenced by the agreement with the Property Manager that was submitted. I further accept the testimony of both the male and female landlord that the Property Manager advertised the property for rent without the authorization of the landlord. This is evidenced by the fact that the unit was never rented. I find their explanation believable that the Property Manager advertised the unit for rent in August 2020 without the landlord's permission.

I therefore find that the landlord has not acted in contravention of section 51(2). I therefore dismiss the tenants' claim.

In view of my findings, I do not consider section 51(3) of the Act and the policy guideline regarding compensation and extenuating circumstances.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the tenants were not successful with their application, I make no order in this regard.

Conclusion

The tenants claim 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: December 13, 2020

Residential Tenancy Branch