



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 in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on January 1, 2019 and ended on April 30, 2020. As of January 1, 2020, rent of \$2,870.00 was payable on the first day of each month. The security deposit has been dealt with. The Tenants moved out of the unit as the landlord at the time had ended the tenancy with a two month notice to end tenancy for landlord’s use dated March 12, 2020 (the “Notice”) on the grounds that the purchaser or a close family member of the purchaser intended to occupy the unit. The Notice attached a letter from the purchaser asking the landlord to end the tenancy as the purchaser intends in good faith to occupy the unit.

The effective date of the Notice was May 31, 2020. The unit was not occupied until at least September 29, 2020.

The Landlord states that the unit was purchased for its daughter (the "Landlord JC") who at the time was attending the local university and residing on campus. The Landlord states that on March 31, 2020 Landlord JC purchased flights to leave the country with a return date of June 4, 2020. The Landlord provides a copy of Landlord JC's flight ticket indicating a departure of April 30, 2020. The Landlord states that the plan was to return in time for the sale completion date of June 12, 2020 and to move Landlord JC into the unit. Landlord JC was to attend the fall semester at the university. The Landlord states that due to the pandemic and emergency orders the return of Landlord JC was delayed from returning until registered students could enter the country. The Landlord provides copies of Landlord JC's flights and changes to the return flight. The Landlord states that after receiving notice on October 20, 2020 allowing return, Landlord JC obtained flights and returned November 14, 2020. The Landlord states that Landlord JC then quarantined for 14 days and moved into the unit on November 28, 2020. The Landlord states that prior to Landlord JC moving into the unit helpers arranged for the purchase of furniture and the move of that furniture with Landlord JC's belongings into the unit.

The Tenant states that non-essential travel was banned after the Notice was served but that Landlord JC was capable of staying in the country to take occupation of the unit in June 2020. The Tenant argues that Landlord JC made a choice to leave the country and the unit vacant while gambling with re-entry. The Tenant states that on March 16, 2020 borders were closed from all countries.

The Landlord states that the Tenant's argument is that Landlord JC should not have left because of the pandemic. The Landlord states that the university shut down in-person attendance and went to online attendance on March 13, 2020 to the remainder of the semester ending April 29, 2020. The Landlord states that Landlord JC's contract for its

on-campus residence also ended on April 29, 2020 and Landlord JC still had a month before it could occupy the unit. The Landlord states that Landlord JC therefore left the country before the end of the semester as it could attend its classes online from out of country.

The Tenant states that Landlord JC made the choice to go to its home out of country and could have occupied the unit as of May 31, 2020. The Landlord states that in Canada emergency orders were changing and that Landlord JC could not have predicted that it would not be able to return as planned on June 4, 2020. The Landlord argues that the very issuance of a ticket for that return date is proof that there was an expectation of return despite the pandemic being known. The Landlord states that the second rebooked return flight of September 26, 2020 is further evidence of the uncertainty and fluidity for return travel during the pandemic.

Analysis

Section 51(2) of the Act provides that 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.

Section 52(3) of the Act provides that 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.

Whether or not, in the circumstances, the Landlord occupied the unit within a reasonable period, given the undisputed evidence of the pandemic with the Landlord's evidence of associated delays and restrictions on Landlord JC's return, I hold the opinion that extenuating circumstances prevented Landlord JC's from occupying the unit until November 2020.

While there is no evidence that Landlord JC could not have remained in the country to take up occupancy, there is nothing in the Act that prohibits purchasers from being anywhere prior to the effective date of the Notice. I also accept that, while Landlord JC may be considered to have chosen to take a risk in leaving the country after issuing the Notice, given the issuance of the return ticket at the time of booking the flight and as there is no evidence that on the date of its departure Landlord JC knew that its return date of June 4, 2020 would have to be cancelled, I cannot find that Landlord JC acted unreasonably in leaving the country prior to the effective date of the Notice. The only evidence of restrictions on returns to the country is the oral evidence of the Tenant that borders were restricted from entry prior to Landlord JC's departure however this is unsupported, and the Landlord makes a reasonable argument that entries into the country have been fluid and uncertain during the period in question. This argument is supported by the evidence of the return flight changes that Landlord JC was able to make and then cancel during this period. For this reason, I also accept that Landlord JC could not have known when it booked its ticket or left the country that its return date of June 4, 2020 would eventually be delayed until November 2020.

For these reasons I find that the Tenants are not entitled to the compensation claimed and I dismiss that claim. As the Tenants have not been successful with this claim I find that the Tenants are not entitled to recovery of the filing fee and in effect, the application is dismissed in its entirety.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 27, 2021

Residential Tenancy Branch