Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, FFT

Introduction

The tenants applied on September 29, 2020 for compensation under section 51(2) of the *Residential Tenancy Act* ("Act") and for recovery of the filing fee under section 72. Both parties, including counsel for the landlords, attended the hearing on January 18, 2021; I affirmed all of the parties before hearing testimony.

Issues

1. Are the tenants entitled to compensation?
2. Are the tenants entitled to recover the filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced herein.

The tenancy in this dispute began on April 1, 2015 and ended on September 30, 2018. Monthly rent was $1,747.67. The tenants paid a security deposit, which is not in issue here. A copy of a written tenancy agreement, along with an addendum, were submitted into evidence.

On July 27, 2018, the landlords served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), a copy of which was submitted into evidence. The Notice indicated, on page two, that the reason for the Notice being issued was that 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 spouse)." The tenants vacated the rental unit on September 30, 2018.

The tenants seek compensation under section 51(2) of the Act, which is an amount equivalent to twelve months' worth of rent. That amount is $20,972.04. They claim that the rental unit, instead of being occupied by the landlord or a close family member, sat unoccupied for a period of eight months. New tenants eventually moved into the rental unit in March or April of 2019. Several photographs of the exterior of the rental unit (which is one side of a duplex) were submitted into evidence. The tenants later found out that the rental unit was rented out at a higher rent than which they were paying. Finally, they argued that the Notice had not been issued in good faith.

The landlords, including through submissions made by counsel, testified that they ended the tenancy so that their daughter, son-in-law, and children (the landlords' grandchildren) could move into the rental unit. Extensive renovations were made at the behest of the daughter. The daughter and family were "in and out" while the renovations were undertaken between October and December 2018, and then finally moved in more permanently in December 2018.

However, just when the renovations had finally been completed, in or around December 2018 the landlords' daughter informed her parents that she had in fact changed her mind and no longer wanted to reside next door to her parents. There had, it should be noted, been a "severe relationship breakdown" between the daughter and her parents. The daughter continued to pay rent until March 2019, at which point the landlords were forced to find new tenants. Included in the landlord' evidence is a copy of an email, dated January 5, 2019, from the daughter to her mother, in which she states, inter alia, "That said, we will not be reconsidering our move." By all accounts, the daughter and landlords remain estranged.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Here, the tenants seek compensation under section 51(2) of the Act, which states:

> (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.

In this dispute, the landlords' close family member – that is, the daughter and her husband – moved "in and out" whilst renovations were underway, and then fully moved in at the beginning of December, two months after the Notice was given. The daughter then resided in the rental unit for less than two months. While the tenants did not make any submissions in respect of what might constitute a reasonable period, I find that, if the reasonable period began after the renovations were complete, that the daughter did not reside in the rental unit for at least 6 months' duration thereafter. Therefore, I find that there was a *prima facie* breach of section 51(2)(b) of the Act.

Once an applicant proves, on a balance of probabilities, that subsections 51(2)(a) or (b) occurred, then I must consider whether the landlords may avail themselves of the defence of extenuating circumstances, as per section 51(3) of the Act. This section of the Act reads as follows:

> 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
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> (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.

In this dispute, it is worth briefly referring to *Residential Tenancy Policy Guideline 50 – Compensation for Ending a Tenancy,* which provides some examples of what might, and what might not, be an extenuating circumstance. One example of where there might be an extenuating circumstance is where a "landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in." One example of when there would not likely be an extenuating circumstance is where a "landlord ends a tenancy to occupy a rental unit and they change their mind."

In the case before me, I find that the daughter's sudden change of mind (no less *after* her parents spent considerable money and time doing renovations) is more akin to the first example of what might constitute an extenuating circumstance. There is no evidence that the landlords were taking a risk in deciding to have the daughter and her family occupy the rental, nor any indication that the landlords could have somehow known or predicted that the daughter would change her mind. Indeed, in support of the landlords' argument that their daughter's change of mind came rather unexpectedly, were two letters of reference. The authors of each letter, who have known the landlords for many years, both explain that "It was a total shock to [the landlords] when their daughter changed her mind without any notice and decided not to move in."

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving extenuating circumstances that prevented them from accomplishing the stated purpose for having issued the Notice. As such, I must dismiss the tenants' application without leave to reapply.

The tenants' claim for recovery of the application filing fee is similarly dismissed.

Conclusion

I dismiss the tenants' application, without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: January 19, 2021

Residential Tenancy Branch