



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss, pursuant to section 51 of the *Act*, and to recover the filing fee for their application. The matter was set for a conference call.

Both Landlords and both Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss, pursuant to section 51 of the *Act*?
- Are the Tenants entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

All parties agreed that the Landlords served the Tenants a Two Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") July 30, 2020. The Notice indicated that the Tenants were required to vacate the rental unit as of September 30, 2020. The reason checked off by the Landlords within the Notice was as follows:

- *All 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 purchaser or a close family member intends in good faith to occupy the rental unit.*

Both parties agreed that the Tenants moved out of the rental unit, in accordance with the Notice on September 30, 2020, and that the Landlords returned the security deposit to the Tenants. The Tenants submitted a copy of the Notice into documentary evidence.

The Tenants testified that as of the date of these proceedings, the Landlords had not moved into the rental unit but instead had been doing renovations to the property. The Tenants testified that they do not believe that the Landlords ever intended to live in the rental unit, but instead, they intended to renovate to re-rent.

The Landlords testified that they purchased the property as a place to live for their daughter while attending school in the area. The Landlords testified that due to the COVID-19 pandemic, their daughter's fall term had been cancelled and that the current winter term was being conducted online. The Landlords testified that they hope the school will reopen for in-person classes in the fall of 2021 and that they still intend for their daughter to live in the rental unit to attend school. The Landlords submitted a copy of their daughter's school admission letter into documentary evidence.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Before me, I have an application pursuant to section 51(2) of the *Act*, which states the following:

Tenant's compensation: section 49 notice

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 accept the agreed-upon testimony of these parties that the Landlords served the Notice to end the tenancy in compliance with sections 49(3), and that the Notice had an effective date of September 30, 2020. I also accept the testimony of the Tenants that they had moved out of the rental unit in accordance with the Notice on September 30, 2020.

In this case, the Tenants have claimed for the additional 12-months of compensation, claiming that the Landlords did not use the rental unit for the stated purpose on the notice.

I accept the Landlords' testimony that they have not use the rental unit for the stated purpose as of the date of these proceedings; however, I also accept the testimony of the Landlords that they had planned to move their daughter into the rental unit but that due to the COVID-19 pandemic their daughter's school had shut down in-person classes and that the daughter would be occupying the rental unit as soon as in-person classes begin in the fall of 2021.

Section 51 (3) of the Act states the following:

Tenant's compensation: section 49 notice

51 (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.

I find that the closure of the in-person classes due to the COVID-19 pandemic to have been an extenuating circumstance that was out of the control of the Landlords. Accordingly, I find that it is appropriate to excuse these Landlords from having to pay the amount required under section 51 (2) of the Act, and I dismiss the Tenants' application for this compensation.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their application, I find that the Tenants are not entitled to recover the filing fee paid for this application.

Conclusion

I dismiss the Tenants application for compensation pursuant to section 51(2) of the Act, due to extenuating circumstances.

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: February 1, 2021

Residential Tenancy Branch