



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act (Act). The tenants applied for:

- Compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice); and
- for recovery of the filing fee paid for this application.

Tenant SP and landlord RM attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their affirmed testimony, to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The landlord confirmed receiving the tenants' evidence and serving their own evidence to the tenants. The tenant denied receiving all the landlords' evidence, as she did not have access to a DVD player.

The landlord said that they printed their evidence and re-served it to the tenants.

I find the landlords presented sufficient and convincing proof that the tenants were served with their evidence. This part of the landlords' evidence, however, was ultimately not necessary in making a decision on the matter as it was not sufficiently related to the relevant issues.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlords and to recovery of the filing fee paid for this application?

Background and Evidence

The tenant submitted there was no written tenancy agreement; however, they said the tenancy began September 15, 2011, for a monthly rent of \$1,100. The monthly rent at the end of the tenancy was \$1,285.

The tenant submitted they were served a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) by the landlord. This Notice was dated January 26, 2020, was signed by the landlord, served on the tenants by personal service on January 29, 2020, and listed an effective move-out date of March 31, 2020. Filed into evidence was a copy of the Notice.

The tenant submitted further that they chose to accept that the tenancy was ending as they vacated the rental unit by March 31, 2020, without filing an application to dispute that the Notice was valid.

As a reason for ending the tenancy, the Notice listed that the rental unit will be occupied by the landlord or a close family member (parent, spouse or child, or the parent or child of that individual's spouse).

The tenants submitted they were told the landlords' son was going to be moving into the rental unit, which was in the lower level of a home owned and occupied by the landlords.

The tenant asserted the landlords' son did not move into the rental unit, as she noticed in October 2020, that the rental unit was being advertised for rent, for a start date of

December 1, 2020, and a monthly rent over what the tenants paid. Filed into evidence was a copy of the advertisement and a friend of the tenants' inquiry to the landlords.

The tenant submitted that she knew the landlord's son did not move into the rental unit as she did not see curtains or blinds in the windows as she drove past the rental unit on the way to taking her son to school in the area.

The tenants submitted they are entitled to compensation equivalent to 12 months' rent, as the landlord has not used the rental unit for the stated purpose listed on the Notice, in the amount of \$15,420.

Landlord's response –

The landlord submitted that her son was older now and wanted to learn the responsibility of living on his own, which was the reason the Notice was issued to the tenants.

The landlord submitted that her son moved into the basement suite in May 2020, as it was not habitable to start with, and stayed there until November 2020, having to vacate as he lost his job and could not afford the costs.

The landlord submitted her son could not find another job, and because of that, she began advertising the rental unit, for a start date of December 1, 2020. The landlord submitted further that the rental unit was empty after her son moved out until a new tenant moved in February 2021.

The landlord said that she could not afford to put in new curtains and blinds right away, but that her son did live in the rental unit.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting

from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

In this case, the tenants, who claim the landlords have not used the rental unit for the stated purpose listed on the Notice, have the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In the case before me, the undisputed evidence shows that the tenants were issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act. In this case, the Notice listed the rental unit will be occupied by the landlord or a close family member (parent, spouse or child, or the parent or child of that individual's spouse).

Section 51(2) provides that if 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 **if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement. [*My emphasis*]

In this case, I find the landlords submitted sufficient evidence their son moved into the rental unit and stayed there until November 2020, which is in excess of the 6 month requirement. I find support for this finding in the *tenant's* evidence, which showed the rental unit for rent with an availability for December 1, 2020.

While the tenant said that she did not believe the landlords' son lived in the rental unit as there were no curtains and blinds, I find this detail, if true, also supports that no other non-family tenant lived in the rental unit during this time period.

Additionally, the landlord provided an explanation why there were no curtains or blinds.

For these reasons, I find the tenants submitted insufficient evidence that the landlords have not used the rental unit for the stated purpose. Their disputed testimony is not sufficient to prove otherwise.

I find the landlords' evidence supports that they or their son occupied the rental unit for at least 6 months after the effective date of the Notice, March 31, 2020.

Conclusion

For these reasons, I find the tenants submitted insufficient evidence to support their application for compensation.

As a result, I dismiss the tenants' application for monetary compensation and for recovery of their filing fee.

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: March 1, 2021

Residential Tenancy Branch