



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The tenant filed an Application for Dispute Resolution on November 17, 2020 seeking compensation from the landlord. This is related to the landlord's issuance of a Notice to End Tenancy for the landlord's Use of Property (the "Two-Month Notice"). issued on July 29, 2020. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on March 11, 2021. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter

At the end of the hearing, the tenant raised an issue on the landlord providing evidence not within the timelines established at the Residential Tenancy Branch. They submitted that material is to be submitted 14 days prior to the hearing and for this reason questioned whether the landlord submitted their evidence on time.

The landlord responded to this to say that the time limit is 8 days.

At the outset of the hearing both parties confirmed their receipt of the other's evidence.

The Residential Tenancy Branch has in place a comprehensive set of rules, known as the *Residential Tenancy Branch Rules of Procedure* (the "Rules"). As stated in Rule 1, the Objective is "to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants."

Concerning submission of evidence, Rule 3.14 specifies for the evidence submitted by the Applicant that it must be received by the respondent and the Residential Tenancy Branch "not less than 14 days before the hearing."

For the Respondent's evidence, Rule 3.15 sets out it "must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing."

Given that the parties here exchanged evidence, I find these disclosure provisions are not at issue and there is no question of the late evidence precluding its consideration in this hearing. On my review, the landlord provided their evidence 7 days in advance of the hearing; therefore, it receives full consideration herein.

Background and Evidence

The tenant provided a copy of the tenancy agreement, signed with the previous landlord on January 15, 2018. At the time of the end of the tenancy, they paid \$2,345 per month. There were periods where the rent was reduced by half to account for incidents of flooding or other relief to the tenant in the time of health restrictions causing difficulty for them.

There was a sale of the property in 2020. The owner here, since October 4, 2020, is named by the tenant as the landlord in this hearing. This tenancy ended on September 1, 2020. The previous landlord issued the Two-Month Notice on July 29, 2020. Prior to this, the tenant was informally advised of the pending sale.

According to the tenant, the real estate agent and previous landlord informed them around the end of July that the purchaser was "someone who wanted to rent to them". On the day of signing for the purchase, the tenant then received information that the purchaser "decided to let their son live there". In the hearing the tenant clarified that they received this information at the same time the landlord served the Two-Month Notice to them.

The Two-Month Notice bears the signature of the previous landlord and is dated July 29, 2020. This specifies the move-out date to be September 30, 2020. On the second page of the document, the reason indicated is that conditions of the sale 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." The landlord indicated that they served this document to the tenant in person, by registered mail, a copy in the mailbox, and by email on July 29, 2020. The letter to the "seller/owner" of the rental unit from

the buyer is dated July 28, 2020 and informs the seller that “The Buyer’s son intends in good faith to occupy the rental property.”

In their Application they stated: “[the landlord] had stated in good faith that their son would be moving in and this hasn’t happened – now they’re looking to rent out the house.” In the hearing, the tenant presented that they drove by frequently, and had a statement from the property manager that “[they] did not feel it was legitimate and was going to be rented out.” With more frequent drives past the property, the tenant noticed that there was no one in the rental unit. Through November, renovations started with “no one there”. After this, they noticed on Facebook that the rental unit was advertised as being available for rent. At this point they “examined their rights” and then filed their Application for dispute resolution.

The tenant here brings a claim for compensation in the amount of \$28,140. This is compensation from the landlord related to the Two-Month Notice. This is the amount of monthly rent at \$2,345, for twelve months.

The landlord provides that they took over the property on October 4, 2020. Their own agent was aware that their son was going to take over the property. At the time of take over, they began light renovations, and their son moved into the basement lower portion of the rental unit. This was during the timeframe when they rebuilt the deck.

The plan then became that their son would move to the upstairs part of the rental unit, and then rent out the lower portion. The original design was to have 3 people move into the basement; however, they were successful in renting out the basement to 2 people and their son then moved upstairs “to be on his own.” At all times the landlord’s son was occupying the unit, and the 2 people moved in to the unit in mid-November.

The landlord provided a comprehensive statement dated March 3, 2021 in their evidence. They questioned the amount of \$28,140, being the tenant’s claimed amount, when they were only paying \$1,172.50 per month. They also provided documentation to show their son’s change of address to that of the rental unit here, and a statement from their own real estate agent that shows that agent was fully aware that the intention was to have the son live in the home. There is also a statement from one of the basement renters, stating they lived there since November 1, 2020.

The tenant questioned the landlord’s own account of the basement tenant moving November 1, 2020, by pointing to their submitted copy of the Facebook ad for rental that was still in place on November 16, 2020, this showing for the upper portion of the house. The landlord responded to this to state the ad was for the upstairs portion of their house, with their son at

that time in the upper portion of the house. The tenant also questioned the landlord's undertaking of renovations, the reasons for that and the timeliness thereof.

Analysis

The *Act* s. 49(5) allows the landlord to issue a Two-Month Notice where 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 *Act* s. 51(2) sets out that a landlord or purchaser to pay an amount that is 12 times the monthly rent payable where:

- (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 purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In reviewing the evidence of the landlord presented here, I find they have accomplished the stated purpose as provided for on the Two-Month Notice issued to the tenant on July 29, 2020. I find they have done so in good faith, primarily for the reason that their explanation in the hearing shows that a family member occupied the unit from October 2020 onwards.

The renovations going on do not reveal that the landlord intended to rent the unit to brand-new tenants. I find it reasonable that the landlord renovated the unit with their own son moving into the unit. The renovations to the deck were necessary to replace that entire failing structure.

I find the landlord provided sufficient evidence to show their son occupied the rental unit. The advertisement subsequent to this was for new tenants to occupy one part of the house. This is not a case where the landlord is seeking completely new tenants to occupy the rental unit. I find their family member resided at the unit, in line with what was stated on the notice to end tenancy. I find the Facebook ad shows availability for one part of the house, not the entire available space.

The tenant also questioned the veracity of the landlord's evidence showing that a new tenant moved in at the start of November. This is inconsequential when weighed against the other evidence that I find clearly shows the landlord's son continued occupancy of the rental unit.

With this reasoning, I find the tenant has not proved that a loss results from any violation of the *Act* by the landlord. For this reason, there is no compensation to the tenant under the *Act* s. 51.

Because the tenant was not successful in their claim, I make no award for the Application filing fee.

Conclusion

For the reasons outlined above, I dismiss the tenant's claim for monetary compensation, 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 *Act*.

Dated: March 15, 2021

Residential Tenancy Branch