



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNETC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation pursuant to section 67; and
- Compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to sections 51 and 67.

Both the tenant and the landlord attended the hearing. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and the tenant confirmed receipt of the landlord's evidence package. Neither party had any concerns with timely service of documents.

Both parties were advised that recording of the hearing was prohibited and each party was given an oath to tell the truth. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Preliminary Issue

The tenancy agreement filed as evidence in this hearing indicates there is a single tenant. The tenant testified that the other person named as an applicant in this proceeding is her husband and that he moved in after the commencement of the tenancy agreement with the landlord. As the tenant's husband is not a party to the tenancy agreement, he does not have any rights or obligations under the tenancy agreement and cannot commence an action against the landlord. I dismiss him as an applicant pursuant to section 64 of the *Act* and I removed his name from the cover page of this decision.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlord for not using the rental unit for the intended use?

Is the tenant entitled to moving expenses?

Can the tenant recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on March 1, 2018 with rent set at \$950.00 per month payable on the 1st day of each month. The tenant testified that when her husband moved in, the rent increased to \$1,200.00 per month and the landlord agreed with this statement during the hearing.

The tenant testified that the landlord served her with a Two Month's Notice to End Tenancy for Landlord's Use, seeking to end the tenancy so that the landlord's cousin could move in. Upon investigating and finding out that a cousin does not meet the definition of a close family member, the landlord told the tenant that the landlord's mother (already living above the tenant) was going to use the space.

After vacating the rental unit, the tenant discovered the rental unit remains vacant with nobody living in it. The landlord's mother did not move in or take it over. The tenant argues that the notice to end tenancy given to her was "illegal" and that she deserves compensation because the landlord told her the cousin would move instead of the mother.

The tenant also seeks moving expenses in the amount of \$350.00 because she hired a moving truck and movers to move her household goods out of the rental unit when she was evicted by the landlord.

The landlord gave the following testimony. The rental unit is a lower unit of a home with an upper and lower unit. The landlord's mother lives upstairs and she doesn't speak English. The landlord named himself on the tenancy agreement and on the notice to end tenancy, although he is not the owner of the house; his mother owns the house. The landlord has already compensated the tenant with one month's rent for serving her with a Two Month's Notice to End Tenancy for Landlord's Use, as required under the *Act*.

He, as landlord, didn't tell the tenant that his cousin would move in. It was his cousin who spoke to the tenant. He doesn't know if his cousin told the tenant she was going to

move in, but he describes it as a miscommunication. Currently, the rental unit is vacant and has been vacant since the tenant left. His elderly mother, the owner of the house, continues to live upstairs and occasionally uses the rental unit after gardening. She uses it for rest as it's easier than going up and down. Also, when his 3 year old niece comes to visit, she likes to play in the suite.

The landlord argues that he is not responsible for paying the tenant's moving fees. She accepted the validity of the notice to end tenancy and moved; the landlord is under no obligation to pay her moving fees.

Analysis

The parties agree that the rental unit has been vacant since the tenant moved out in accordance with the Two Month's Notice to End Tenancy for Landlord's Use served upon her. While the tenant argues that leaving the unit vacant entitles her to compensation because the landlord is not using it for the stated purpose, the landlord argues that the landlord has reclaimed the rental unit as living space for the landlord, or in this case his close family member, his mother.

There is no argument that the cousin never moved into the rental unit. Had she done so, the tenant would be right in asserting that a close family member of the landlord didn't occupy the unit after the tenant vacated it. In this case, however the choice to leave the rental unit only partially occupied by the landlord's mother while she occupies the upper unit of the house complies with the provisions of section 49 of the Act. The mother can be considered to be occupying the rental unit.

The mother of the landlord is considered to be reclaiming the rental unit as her own living space. This notion is explored in Residential Tenancy Branch Policy Guideline 2-A [Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member].

Part C of the guideline reads:

Reclaiming a rental unit as living space

If a landlord has rented out a rental unit in their house under a tenancy agreement (for example, a basement suite), the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living

accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

In this case, I find the landlord ended the tenancy for the purpose of reclaiming the rental unit as living space. The landlord must continue to do so for at least 6 months from the time the tenancy with this tenant ended to meet the requirements under section 51(2). I find there has been no breach of section 51 of the *Act* and the tenant's application for compensation under this portion of the *Act* is dismissed without leave to reapply.

Next, the tenant seeks compensation for moving expenses. Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, 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 this case, I have found that the landlord did not breach the *Act* when ending the tenancy with the tenant. As such, I find the tenant is not entitled to damages where no breach has occurred and as a result, this portion of the tenant's claim is likewise dismissed without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The application is dismissed 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 *Residential Tenancy Act*.

Dated: May 10, 2021

Residential Tenancy Branch