



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 filed by the Tenant for a monetary order pursuant to section 49 and 51 of the Residential Tenancy Act, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. All parties confirmed they were not making any unauthorized recording of the hearing.

Issue to be Decided

Is the tenant entitled to compensation for the landlord ending the tenancy and not using the property for the intended purpose?

Background and Evidence

The tenancy began on October 20, 2017. Rent in the amount of \$5,500.00 was payable on the first of each month. A security deposit of \$2,750.00 was paid. The tenancy ended on October 17, 2021.

The tenant confirmed that they did not receive a Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant stated on February 22, 2021 that they were informed by the landlord that they wanted to move back into the rental unit, as soon as possible. The tenant stated they accommodated the landlords request because the

landlord looked really sad and had been considerate to them during the tenancy. The tenant stated that they agreed to move out of the premise for sake of the landlord.

The tenant testified that on April 6, 2021, they discovered that the landlord had listed the home for sell, which the listing was removed on April 8, 2021. The tenant stated that they believe that was the intent of the landlord was to sale the residence and not to live in it. The tenant stated that the landlord is living in the premise as they were there serving their evidence two weeks before the hearing.

The landlord testified that they have had a good relationship with the tenant and were very thankful as they took really good care of the property. The landlord stated they did not issue a notice to end tenancy. The landlord stated that the tenancy ended by a mutual agreement.

The landlord testified that they did list the home for sell over a two-day period, because they were thinking of downsizing as their daughter had been just accepted in a school in another country.

The landlord testified that they did not sale the home and have been living in the premise since April 11, 2021.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenant is seeking compensation pursuant to section 51(2) of the Act, an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

Section 49 of the Act provides that in order to end the tenancy for landlord's use of the property the landlord must give the tenant a 2 Month Notice to End Tenancy in the approved form. Section 5 of the Act does not allow either party to contract outside the Act.

Section 51 of the Act provides that a tenant **who receives** a notice to end tenancy under section 49 of the Act may be entitled to receive the equivalent of 12 times the monthly rent, if the landlord does not within a reasonable time use the premises for the stated purpose.

In this case, the tenant did not receive a notice to end the tenancy under section 49 of the Act. Therefore, there was no requirement for the tenant to vacate the property.

While I accept the tenant moved for the sake of the landlord. However, that leads me to believe it was mutually agreed upon. Rather, than the landlord exercising their authority under the Act.

Further, even if the tenant had received a Two Month Notice to End Tenancy for Landlord's Use of Property, which they did not, I find their claim would still fail because the evidence of both parties was that the landlord moved into the property.

While I accept the landlord listed the home for sale for a two-day period that alone is not a breach of the Act, as the property was not sold. The landlord is entitled to list the home for sell as long as any potential purchaser does not take possession of the premises during the required six-month period that the landlord is required to live in the premises.

Based on the above, I find the tenant has failed to prove the landlord ended in the tenancy in accordance with section 49 of the Act, and even if the landlord had, the landlord moved into the premise and the tenant still would not be entitled to compensation under section 51(2) of the Act. Therefore, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application is dismissed.

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: June 02, 2021

Residential Tenancy Branch