Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The tenants filed an Application for Dispute Resolution on February 6, 2021 seeking compensation for the landlord's end of the tenancy, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 8, 2021.

Both the landlord and the tenants 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.

At the outset of the hearing, both parties confirmed they received the evidence of the other. On this basis, the hearing proceeded.

Issues to be Decided

Are the tenants entitled to monetary compensation for the Notice to End Tenancy for the Landlord's Use of Property (the "Two-Month Notice"), pursuant to s. 51 of the *Act*?

Are the tenants entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The tenants submitted a copy of their original tenancy agreement, and confirmed its details in the hearing. The tenancy started on March 15, 2014, with a previous landlord, prior to this landlord's purchase of the property in June 2020. The parties agreed that rent was $975 per month.

The landlord issued the Two-Month Notice on June 25, 2020. This gave the final move-out date of August 31, 2020. In the hearing the landlord testified that they served the document to the tenants directly by leaving a copy with them in person. The tenants verified this. The reason for the Two-Month Notice was that "the rental unit will be occupied by the landlord or the landlord's close family member" – and the landlords indicated that the "landlord or the landlord's spouse" will occupy the rental unit.

The tenants left the unit on August 31, 2020, before 1pm. The rental unit in which the tenants maintained tenancy is one of two structures on the property, with the other being a cabin.

After their move, the tenants noticed pictures on social media of the landlord selling personal articles out of the cabin. At this point, the tenants started gathering evidence when they questioned the veracity of the landlord's claim that they were going to live in the rental unit. As a method of gathering evidence to show the landlord was not actually occupying the rental unit as stated on the Two-Month Notice, the tenants made two recordings using video. They recorded themselves at the property knocking on doors and making enquiries in January 2021. These contain the following footage:

- a third party answered the door at the rental unit, then stated she had been in the rental unit since November 1 and the landlord lived in the cabin – from this the tenants understood that this third party was renting with her family
- the landlord responded to the tenants' visit at the cabin and had a discussion with the tenants – the topic was the manner in which the tenancy ended.

From this gathered evidence, the tenants concluded that the landlord did not live in the rental unit, and only resided in the cabin. They plead that the landlord did not use the rental unit for the stated purpose provided on the Two-Month Notice for at least six months. With rent at $975 per month, the tenants make their case for 12 months' compensation as per s. 52 of the *Act*. This amount total is $11,700.

In their submissions the landlord acknowledged they did not remain in the rental unit for six months. They remained from September 1 to October 31. They present this was due to extenuating circumstances as provided for in s. 51(3). These were health concerns. They submit the unit was "extremely dirty, toxic, smoked in", making it difficult to reside there.

The landlord provided a written statement for this hearing. Points to note include: their first visit to the rental unit was on June 26th; there was no walk-through at the end of the tenancy. When they moved in on September 1 there was "total disarray as there was junk and garbage everywhere." There was a stench that was "absolutely awful". There were "approximately 10 loads of the tenants' garbage and junk left outside to the dump". The walls were yellow due to smoke residue. After they moved in, approximately two days later they began to have headaches that turned into migraines. After weeks of cleaning, they were still suffering from migraines and insomnia. Their acupuncturist and osteopath advised them they should move out because their health was not improving. Due to their chemical sensitivities, they moved out from the rental unit at the end of October 2020 and into the other cabin on the property.

The landlord also provided in their statement that a new tenant approached them at the end of October, inquiring on "a potential rental" because they were desperate for housing. After "quite some time" in the rental unit, this new tenant reported that they and their family had no ill health effects.

They presented written statements from others concerning the state of the rental unit. These statements attest to:

- "garbage, toxic chemicals, property damage and general filth."
- the smell of cannabis residue/smoke damage inside the mobile home was overwhelming and unbearable
- there were repairs within the unit undertaken by the landlord's brother.
- the state of the unit caused "severe stress and resulted in daily migraines and insomnia" for the landlord.
- there was "great improvement in [the landlord's] physical and mental health" after their move out from the unit
- there were "ongoing migraines, nausea, depressions and insomnia", where the landlord is "normally very healthy, in excellent mental health, and active."

In a written statement, an osteopath who has known the landlord for quite some time gave their opinion on the landlord "living with chemical irritants." A treatment after the landlord's move out saw the tenant "feeling much better". They conclude: "It is my professional opinion

that the dwelling she was living in was harmful to her health as it was affecting her overall health and wellbeing."

The landlord's acupuncturist provided a note that the landlord suffers from "multiple chemical sensitivity, and neurobiologic sensitization." This leads to disruption of sleep patterns and full nights of insomnia. Upon the landlord's move into the rental unit, their underlying condition was exacerbated, with it being "obvious that the environmental triggers were in the household where [they were] living." These were "environmental sensitivities . . . triggered by living in the [rental unit] . . .and underlying health conditions exacerbated by cannabis and tobacco residues."

The new tenant in the rental unit also provided a statement. They described how they approached the landlord because "[they] had heard that [the landlord] had recently bought a property with a rental unit." They were desperate to secure housing. The landlord had made it clear that "it could be potentially uninhabitable due to the chemical residues left from the former tenants." After a trial period staying in the rental unit, this new tenant and their family "secured the home for November 1st, 2020 and have been living there since."

In the hearing, the landlord – via an advocate – stressed that the condition of the unit and the ill effect it had on their health constitute extenuating circumstances. This thereby relieves the landlord of their obligation to use the rental unit for the reason stated on the Two-Month Notice for a six-month period. They also spoke to the tenants' motivations here, where they left an extreme mess for the landlord, and contributed to the toxic environment by leaving meat in a closet within the unit.

In the hearing, the tenants responded to this to state it was likely that the landlord never actually resided in the rental unit. Additionally, it is not possible to state that the cabin is in a better state that the rental unit where the tenants' own past cleanups of that cabin revealed serious rodent problems. Additionally, they plead the landlord had no proof of the state of the rental unit clean up. Based on one of the tenant's own experience in remediation, this unit could have been cleaned up within 2 months' time. They were also aware of the landlord's ability to issue a Four-Month Notice to End Tenancy, and by this measure ensure clean by the tenants themselves.

Analysis

The *Act* s. 49 allows for a landlord to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in a situation where a landlord issues a Two-Month Notice. This is covered in s. 51:

(1) Subject to subsection (3), the landlord . . . must pay the tenant . . .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 of 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.

(2) The director may excuse the landlord . . .if, in the director's opinion, extenuating circumstances prevented the landlord . . . from
    (c) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
    (d) 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.

Here, the landlord issued the Two-Month Notice on June 25, 2020. The tenants did not challenge the validity of the Two-Month Notice and moved out by August 31, 2020. Both the landlord and the tenant have provided evidence that the landlord was not occupying the rental unit by November 1, 2020. This evidence is not in dispute.

I find the evidence shows the landlord did not use the rental unit for the stated purpose provided on the Two-Month Notice for at least 6 months' duration. The landlord's brief occupancy of the rental unit was from September to October.

The question is whether in my opinion extenuating circumstances prevent the landlord from using the rental unit for that purpose. This requires my examination into the veracity of what the landlord submits are extenuating circumstances. This involves the landlord's evidence on the state of that rental unit affecting their health to a degree that they could not occupy the unit.

In my opinion, extenuating circumstances are present in the fact pattern described here.

The landlord presented statements from individuals who assisted them with the move. These statements attest to the state of the rental unit as being basically polluted with residue from cannabis and other smoke. There were toxic substances present, as well as a lot of garbage and even a collection of rotting meat.

The landlord presents that their single visit to the rental unit prior to their move in was on June 26, 2020. From their statement, I conclude the landlord entered the rental unit: they had asked

the tenants if they were growing based on the “very strong marijuana odour permeating the residence”, and they admitted to smoking it inside the house. From this evidence I find something of concern was immediately identified by the landlord.

The landlord’s acupuncturist presented that there is “multiple chemical sensitivity, and neurobiologic sensitization.” They describe the condition as that involving “liver excess and heart blood deficiency” and in the landlord’s case this was manifest as a disruption of regular sleep patterns. By September 17 the tenant’s past progress with the acupuncturist was set back, with observable symptoms noted at that time. Two weeks later, this escalated further. The recommendation of the osteopath and the acupuncturist was that the landlord should remove themself from that environment.

From this evidence, I find the landlord had an underlying condition. The acupuncturist who provided the written statement had a relationship with the landlord since 2015, and I give weight to the written statement for that reason. While this is not a licensed medical practitioner opinion, I find the evidence carries weight where this professional – offering a service that assists in healing – was aware of the landlord’s condition, and was in a position to make notice of varying conditions and observable symptoms of impacted health. The factors affecting that health were known to this acupuncturist, and they were able to establish that something in the rental unit had triggered ill effects in the landlord.

I find it is not difficult to trace the origin of the landlord’s affected condition to the rental unit. The other accounts provided by the landlord carry weight in establishing that the unit was in a state of uncleanliness with residue being present, and easy to smell by other visitors who assisted the landlord with moving and cleaning.

The degree of cleaning undertaken at the start of the landlord’s move is detailed in the statements they provided. From these I conclude the legitimate intention of the landlord was to occupy the rental unit and move forward with their business in that same space. I find as fact that these plans and their way of life was interrupted with health concerns that caused ill effects. There were visits to their osteopath and the acupuncturist because of this.

To a lesser extent, I find it is significant that there was an interim period between the landlord’s move into the rental unit, and their move out two months later. From this length of time I conclude the landlord was not intent on renting the unit to other tenants immediately upon their possession of the rental unit. This makes it more likely than not that they legitimately tried to occupy the rental unit, then plans were interrupted with health concerns.

Further, I find it is relevant that the landlord chose to make their living arrangement in the cabin on the same property. I find this shows they had to undertake an alternate plan, and more likely than not this has its basis in the ill effects on their health.

For these reasons, I excuse the landlord from paying the 12-month rent equivalent. They have shown that extenuating circumstances were present that prevented them from accomplishing the stated purpose for at least 6 months' duration. This portion of the tenants' Application is dismissed without leave to reapply.

Because they were not successful in their Application, there is no reimbursement of the Application filing fee to the tenants.

Conclusion

For the reasons outlined above, I dismiss the tenants claims, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 23, 2021

Residential Tenancy Branch