



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL
 MNETC, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for monetary compensation for the landlord's failure to use the rental unit for the purpose contained in a notice to end the tenancy for landlord's use of property, and to recover the filing fee from the landlord.

The landlord and the tenant both attended the hearing, and each gave affirmed testimony and provided evidentiary material in advance of the hearing. The parties were given the opportunity to question each other and give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for harassment, anxiety, stress and time and energy to dispute the tenant's claim?

Background and Evidence

The tenant testified that this fixed-term tenancy began on September 1, 2017 and reverted to a month-to-month tenancy after the first year. The tenant and her mother

vacated the rental unit on March 15, 2020. Rent in the amount of \$1,260.00 was originally payable on the 1st day of each month, which was raised each year, and the tenant is not certain of the amount paid by the end of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00, which was returned to the tenant, less amounts owed for utilities, and no pet damage deposit was collected. The rental unit is a suite in the lower level of a house, and the landlord resided in the upper unit. A copy of the tenancy agreement has been provided by the landlord for this hearing.

The tenant further testified that the landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property by registered mail. A copy has been provided by the landlord for this hearing, and it is dated December 17, 2019 and contains an effective date of vacancy of March 1, 2020. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)."

The tenant has also provided a video and an audio recording of other people who state that they are not related to the landlord or the landlord's family, and have been renting since October, 2020.

Since the tenant did not recall the exact amount of rent payable at the end of the tenancy, and was not sure whether to calculate the claim based on the amount of rent payable at the beginning or end of the tenancy, the tenant took a wild guess in the application which claims \$16,200.00 and recovery of the \$100.00 filing fee.

The landlord testified that rent at the end of this tenancy was \$1,340.00 per month.

The landlord and his partner used the rental unit for their own use and did not re-rent until October 1, 2020, and has provided a copy of the tenancy agreement for the new tenants. The new tenancy agreement specifies rent in the amount of \$1,500.00 per month, commencing October 1, 2020.

The entire situation regarding this and evidence provided shows that for 6 months, which is the minimum required, the landlord did not have any rental income.

The landlord spent a great deal of time preparing for this hearing and needed assistance to upload evidence, sending registered mail and writing letters. The tenant sued the landlord so the landlord sued the tenant for the same amount of money for harassment, anxiety, stress, time and energy to dispute the tenant's claims.

Analysis

Firstly, dealing with the tenant's application, the *Residential Tenancy Act* specifies that where a landlord gives a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), the landlord must use the rental unit for the purpose contained in the Notice for at least 6 months. In this case, the landlord has provided a tenancy agreement for a new tenant commencing October 1, 2020, which is completed totally in handwriting very similar to the tenancy agreement with the tenant. The Notice is effective March 1, 2020 and the parties agree that the tenancy actually ended on March 15, 2020. April 1 to September 30, 2020 is 6 months, and I find that the landlord has not used the rental unit for any other purpose than his own use for at least 6 months. Therefore, the tenant's application cannot succeed.

With respect to the landlord's application, the landlord testified that since the tenant filed an application claiming \$16,200.00, the landlord did the same, and claims that amount for harassment, anxiety, stress and immense amount of time and energy involved. I am very satisfied that being sued for over \$16,000.00 would cause stress, however, a tenant is entitled to bring such an application. Stress or no stress, the application of the tenant cannot be considered harassment, and I dismiss the landlord's application.

Since neither party has been successful, neither party is entitled to recover the filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

The application of the landlord is hereby 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: June 28, 2021

Residential Tenancy Branch