



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act (Act) filed on April 6, 2021. The tenants applied for a monetary order for money owed or compensation relating to a Notice to End Tenancy for Landlord's Use of Property and for recovery of the filing fee paid for this application.

The tenant RF, the landlord, and the landlord's spouse attended, and they were provided the opportunity to present their evidence.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Both parties confirmed under affirmation that they were not recording this hearing in compliance with the Residential Tenancy Branch Rules of Procedures 6.11.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and to recovery of the filing fee paid for this application?

Background and Evidence

The tenants' evidence showed that this tenancy started on April 1, 2016, for a monthly rent of \$850.00. The monthly rent at the end of the tenancy was \$950.00, according to the tenant.

The tenants' evidence and the parties confirmed that the landlord served the tenants a Two Month Notice to End Tenancy for Landlord's Use of the Property (Notice), dated and received on February 17, 2021. A copy of the Notice was submitted by both parties and showed an effective end-of-tenancy date of April 30, 2021, in type, and May 1, 2021, in handwriting. The tenant said that he understood the move-out date was May 1, 2021.

The reason listed on the Notice stated that the rental unit will be occupied by the landlord or the landlord's spouse.

The tenants submitted that they accepted the Notice, chose to move-out early and they vacated the rental unit on March 15, 2021, with a final clean-up on March 31, 2021.

The tenant said that the landlord is not currently using and has not used the rental unit for the stated purpose since they vacated, as the landlord had another occupant move into the rental unit and further, placed the 4-plex residential property containing the rental unit for sale. The tenant said that he saw a "Sold" sign on the for-sale sign. The tenant also said the landlord does not live in the rental unit.

The tenant submitted that they are entitled to compensation equivalent to 12 months' rent in the amount of \$11,400.00, as the landlord has not used the rental unit for the stated purpose listed on the Notice.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In the case before me, the undisputed evidence is that on February 17, 2021, the landlord issued the tenants a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, for an effective move-out date of May 1, 2021. The tenants complied and moved out early.

The landlord marked the Notice indicating that the rental unit will be occupied by the landlord or the landlord's spouse.

Section 51(2) provides that if the landlord fails to establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and the rental unit, except in respect of the purpose specified in

section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

In this case, the effective date of the Notice is May 1, 2021, and I find the landlord had 6 months beginning within a reasonable period from that date to use the rental unit for the stated purpose. Instead of waiting for a reasonable time of six months after that effective date, the tenants filed their application on April 6, 2021, which was prior to the effective date. As of the date of the hearing, six months after the effective date had not yet lapsed.

I find the landlord had that 6-month time period, after a reasonable time, to accomplish the stated purpose.

As the tenants made their application for monetary compensation under section 51 of the Act on April 6, 2021, prior to the effective date of May 1, 2021, I find their application was premature when it was made.

As a result, I dismiss the tenants' application, **with leave to reapply**. I note that this does not extend any applicable time limitation periods.

As I did not grant the tenants' application, I do not award them recovery of their filing fee.

Conclusion

The tenants' application is dismissed with leave to reapply, as it was made prematurely.

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: September 7, 2021

Residential Tenancy Branch