



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

On March 19, 2021 the tenant requested an adjournment which was granted. This is a reconvened hearing of the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package. Both parties confirmed the tenant served the landlord with the submitted documentary evidence via Canada Post Registered Mail on December 9, 2020. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on January 27, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Extensive discussions took place over 63 minutes and the hearing was adjourned due to a lack of time. Both parties were advised that a new notice of adjournment would be sent to each party detailing the adjournment date, time and access codes. Both parties

were also cautioned that no new evidence was to be submitted nor would it be accepted.

On September 13, 2021 the hearing was reconvened with both parties. The landlord was represented by counsel, T.D. The tenant was represented by counsel, S.K. Both parties were given an opportunity to provide testimony, make submissions and present evidence.

Preliminary Issue(s)

The landlord has requested that the Residential Tenancy Branch (RTB) dismiss the tenant's claim as the tenant has filed for dispute more than 2 years after the tenant provided notice.

Section 60 of the Act states that, if this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

The landlord stated that the application for dispute was filed on November 27, 2020 and the tenant gave notice to end the tenancy on November 19, 2018 to end the tenancy on November 30, 2018. As such, I find that the tenant applied within the allowed 2 years of the date when the tenancy ended. The landlord's request to dismiss is denied.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 15, 2014 on a fixed term tenancy ending on October 15, 2014 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated April 10, 2014. The monthly rent was \$1,100.00 payable on the 1st day of each month. A security deposit of \$550.00 was paid on April 15, 2014.

Both parties confirmed the landlord issued and served a 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 30, 2018 dated October 31, 2018 in person. The 2 month notice sets out an effective end of tenancy date of December 31, 2018 and the reason as:

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).

Both parties confirmed the tenant served early notice to vacate the rental unit to the landlord on November 19, 2018. Both parties confirmed the tenancy ended on November 30, 2018.

The tenant seeks a monetary claim of \$13,300.00 which consists of:

\$13,200.00	Tenant's Compensation: Section 49 Notice (\$1,100.00 X 12 Months)
\$100.00	Filing Fee

The tenant argues that the landlord issued a notice to end tenancy in bad faith. The tenant provided a written description which states,

Landlord's issued a notice to end tenancy in bad faith because they wanted to sell the house untenanted. Landlord's were actively trying to sell the house in the days before the notice to end tenancy (shown in 1 month prior) and in the days following service (evidence that they were trying to sell 3 days after). House was re-listed 5 months after tenant had vacated.

The tenant argued that the landlord had listed the rental property for sale approximately 1 month prior to issuing the 2 month notice dated September 21, 2020. The tenant referred to submitted copies of notice(s) for viewing for the sale of the property. The tenant also referred to numerous messages submitted as evidence in which the landlord was selling the house. The tenant also stated that the landlord was trying to sell the house all throughout the year 2018.

The tenant argued that the landlord did not occupy the rental space and eventually sold the house. The tenant referred to exhibits 8-1 and 8-2 copies of notice(s) of showings. The tenant referred to exhibit #9 copies of text messages regarding the house for sale beginning in 2018. The tenant referred to exhibit #6-4 and 6-5 copies of a property sale history of the property. The tenant stated that the landlord evicted her to show the

house for sale more easily without a tenant. The tenant stated that the landlord moved into a new home 11 months after the tenancy ended.

The landlord disputes the tenant's claims arguing their son occupied the suite until October 2019 and refute the tenant's claim that the landlord issued the notice in bad faith.

The landlords confirmed that their property was listed for sale throughout 2018 and were having ongoing family discussions with their son, E. The landlords stated that the discussions involved "pulling the property off the market and helping him with accommodation" so that he could resign from full time employment and go to school. The landlord confirms that their son moved into their main floor den in September 2018. The landlords confirmed that "a listing contract was still in force but was set to expire at the end of October/beginning of November." The landlord referenced submitted copies of UHaul Rental and Public Storage receipts in support of the move in. The landlord issued the 2 month notice to end tenancy dated October 30, 2018. The landlord stated that the tenant subsequently gave notice to end the tenancy early on November 19, 2018 for November 30, 2018. The landlords' son moved into the rental premises when the tenant moved out and remained occupying this space until October 2019. The landlords stated that their son had resigned from full-time employment and attended a full-time program at a college nearby. The landlords stated that the listing for sale expired on November 7, 2018 and was not renewed. The landlord stated that their son vacated the property in October 2019. The landlords stated that the property was relisted for sale in November 2019. The landlord stated that the property was then sold when a contract for purchase of the property was completed.

The tenant argued that the property has been listed for sale numerous times and referenced exhibit 6-4 an MLS listing history which shows that the listing did expire on November 8, 2018 but was again listed in May 2019 where it was terminated on July 3, 2019; listed for sale on July 3, 2019 and again on August 8, 2018 where it was terminated on August 8, 2019; and listed as sold on August 21, 2019. The tenants stated that each time the property was listed it was subsequently re-listed at a lower list price.

The landlords rely on a submitted affidavit of their son, E.V. dated January 11, 2021 which states in part that he moved back into the family home on or about September 1, 2018 and was temporarily staying in the main floor den. E.V. also states that he immediately occupied the basement space on November 30, 2018 and did not move out until October 2019 when the property was sold.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Both parties confirmed the landlord issued a notice to end tenancy for landlord's use of property dated September 21, 2020.

The tenant seeks monetary compensation under section 51 of the *Act* arguing the landlord issued the 2 month notice in "bad faith" and was trying to sell the house untenanted instead of occupying it themselves. The tenant claimed that the landlord's son did not occupy the rental premises.

Section 51 of the *Act* states in part that a tenant who receives a notice to end tenancy under section 49 is entitled to receive from the landlord an amount equal to 12 times the monthly rent payable under the tenancy agreement if steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or the rental unit is not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case despite the tenant claiming that the landlord's son did not occupy the rental premises, I have before me undisputed evidence by the landlords and their son, E. who provided an affidavit to the contrary. On this basis, I find that the landlord's son did occupy the rental premises as there is no evidence before me to the contrary.

The tenant has also argued that the landlords issued the 2 month notice in "bad faith" as she claims that the landlords wanted an untenanted suite to sell the property. The onus of establishing good faith falls on the landlord. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The tenant has made submissions that the landlords wished to have an untenanted suite to allow for an easier sale. The landlords disputed this claim re-stating that the property was listed for sale

throughout 2018 and that discussions were made with their son to allow him to resign his full time employment to return to school. The landlords provided undisputed affirmed testimony that their son occupied the rental unit and moved into the main floor den in September 2018. The landlords provided copies of Public Storage receipts for August 2018; and reservation for a Uhaul van on August 24, 2018; and an affidavit from the landlords' son confirming the move and occupying the rental space on November 30, 2018 to October 2019. I find that despite the tenant providing evidence of the landlords' ongoing attempts to sell the property there is no evidence to the contrary that the landlord's son did not occupy the rental unit from November 30, 2018 to October 2019 approximately 11 months. On this basis, I find that the tenant has failed in her application.

Conclusion

The tenant's 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: September 23, 2021

Residential Tenancy Branch