



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started on September 1, 2008. As of March 1, 2018, rent of \$1,691.04 was payable on the first day of each month. The Tenant received a two month notice to end tenancy for landlord’s use dated April 30, 2019 (the “Notice”). The Notice sets out an effective date of June 30, 2019 and that the Landlord or a close family member of the Landlord will occupy the unit. The Tenant moved out of the unit on June 30, 2019.

The Tenant states that the Landlord did not occupy the unit as the Tenant saw the Landlord at the Landlord’s own residence, an apartment in the same building as and next door to the unit after the tenancy ended.

The Landlord's Agent (the "Agent") states that in addition to being the Landlord for the tenancy the Landlord also was the executor of the estate to which the unit belonged. The Agent states that at the time the Notice was served the Landlord intended to occupy the unit by storing belongings in the unit and using the kitchen and bathroom while the Landlord's apartment was being renovated. The Agent does not know whether the Landlord was going to sleep at the unit. The Landlord was going to move back into the apartment after the renovations and the Agent does not know the Landlord's intent for the unit after the renovations. The Agent states that the Landlord could not occupy the unit for medical problems and the Agent does not know what those problems were. The Agent states that the Landlord did move some belongings into the unit after the end of the tenancy. The Landlord provides a copy of a letter from a medical doctor dated September 14, 2021. This letter sets out that the Landlord "was dealing with an unfortunate and unanticipated health crisis from July 2019 to beyond November 2020. This situation prevented (the Landlord) from relocating during this period." The Agent has no further information or details about the Landlord's medical issues. The Agent states that the renovations to the Landlord's apartment were continually delayed after the end of the tenancy as the Landlord was not in good health to do the renovations. The Agent states that the estate was settled in November 2020 with ownership of the unit being transferred to the Agent, the brother of the Landlord. The unit remained vacant until rented in April 2021.

The Tenant states that between April and June 2019 the Landlord looked fine and was working in the garden as always. The Tenant states that their own partner was ill with cancer at the time of their move out of the unit and that the partner died in September 2019.

Analysis

Section 51(3) of the Act provides that the director may excuse the landlord from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49
- (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Although the Landlord's evidence does not appear to support a good faith intention to occupy the unit prior to the Notice being served, a good faith intention is only relevant to a dispute of the validity of the Notice itself. This was not done. Although the evidence of medical issues is not fulsome, given the Landlord's undisputed evidence of a doctor's opinion that the Landlord was prevented from occupying the unit due to a health crisis for the period commencing with the effective date of the Notice and well past 6 months, I find on a balance of probabilities that the Landlord has substantiated that extenuating circumstances prevented the Landlord from occupying the unit. The Tenant's application is therefore dismissed.

Conclusion

The 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 Act.

Dated: October 20, 2021

Residential Tenancy Branch