



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order as against the landlords for compensation related to a notice to end the tenancy for the landlords' use of the property; and to recover the filing fee from the landlords for the cost of the application.

One of the tenants attended the hearing, gave affirmed testimony and represented the other named tenant. Both landlords also attended, one of whom gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The landlords' evidentiary material was not provided within the time required under the Rules of Procedure, however the tenant agreed that all of the evidence has been received and the tenant has had an opportunity to review it. Neither party raised any issues with respect to the exchange of evidence or opposed the inclusion of any evidence. Therefore, all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The parties agree that the landlords named in this application are the purchasers of a home which includes the basement suite that the tenants resided in.

The tenant testified that her husband moved into the rental unit (basement suite) about 10 years ago, and the tenant who testified moved in about 4 years ago. Rent in the amount of \$855.00 was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the previous owners as landlords collected a security deposit from the tenants in the amount of \$450.00 as well as a pet damage deposit in the amount of \$225.00 which was paid about 4 years ago. Both deposits were returned in full to the tenants.

On March 19, 2021 the tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property and a copy has been provided for this hearing. It is dated March 19, 2021 and contains an effective date of vacancy of May 31, 2021. The reason for issuing it states: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or close family member intends in good faith to occupy the rental unit." The Buyer's Notice has also been provided for this hearing, which has been digitally signed by 2 buyers who are the landlords named in this application, and is dated March 17, 2021.

The tenant further testified that the tenants vacated the rental unit at the end of May, 2021 and did not pay rent for May. A copy of a tenancy agreement for another address has been provided for this hearing for a tenancy to commence on May 15, 2021, for rent in the amount of \$2,200.00.

Three days after the tenants vacated the rental unit, so on June 3, 2021, the landlords posted an advertisement to rent the basement suite on Face Book Marketplace, and a copy of the advertisement has been provided for this hearing. It states that the rental unit was available for rent effective June 15, 2021 for rent in the amount of \$1,350.00. The landlords now have another tenant residing in the basement suite. On June 18, 2021 the tenant witnessed new tenants moving in; the tenants have friends that live in the area and the tenants frequent the neighbourhood. Further, the tenants' friend advised the tenants that the friend spoke to the new tenants, and they introduced

themselves as neighbours, advising that they were tenants of the basement suite and had moved from another City.

The tenants now pay \$2,200.00 per month for rent, and viewed lots of places starting as soon as they received the Two Month Notice to End Tenancy for Landlord's Use of Property, but the market was hot and it was incredibly hard to beat out other applicants looking for rentals. The tenants couldn't find anything more affordable, and running out of time decided to blindly accept the higher rent. The tenants couldn't find anything more affordable and only had 2 weeks to find a new place to live. The tenants have a 3 year old daughter, and that was better than living in the tenants' car. They took the first place that they could.

The tenant was told that they were entitled to compensation equivalent to 12 times the monthly rent that the tenants currently pay, which amounts to \$26,400.00, and the tenants claim that amount from the landlords in addition to recovery of the \$100.00 filing fee.

The landlord (AKS) testified that the landlords purchased the house, intending for the parents of the other landlord to move into the rental unit. The landlord's in-laws (the parents) went to India in 2019 but are permanent residents of Canada, and planned to return to Canada in mid-May, 2021.

In April, 2021 flights were banned into Canada and the parents could not return during the second week in May as they had intended. Direct flights resumed in September, 2021, and copies of news columns have been provided for this hearing.

One of the parents fractured a knee on June 1, 2021, and is also diabetic and has a bad heart. The physician advised the parent to not travel back to Canada. A video provided by the tenants shows the other landlord on the telephone, which was the conversation with the other parent who said that they would not be returning to Canada. A week after the fracture the parent fell and the landlords were told that it would be a year before they could come back.

The landlords took possession of the rental home on May 31, 2021 and the Notice was served in March. The landlords never met the sellers or the tenants.

The landlords placed an advertisement to rent the basement suite on June 3, 2021, and the tenancy agreement that the tenants have provided as evidence of their new rental shows a commencement date of May 15, 2021, not May 31, 2021 as the tenant had testified.

There was no intent to increase the rent, and the landlords didn't know how much the previous owner was collecting for rent. Currently the landlords reside in the upper level of the rental home with their son and a parent of the landlord who testified, and the basement suite is tenanted. The rental unit was rented commencing June 15, 2021.

SUBMISSIONS OF THE TENANT:

The landlord's testimony is that they weren't aware until June 1 that the parents weren't coming to Canada, but the flight ban was in April.

When the notice to end the tenancy was served, the tenants had a conversation with the realtor wherein the tenants expressed concern about the purchasers re-renting the basement suite. The realtor advised that he had spoken to the other realtor and assured the tenants that the purchaser's family was moving in.

SUBMISSIONS OF THE LANDLORD:

The parents were to come to Canada in May, but flights were cancelled in April.

The landlords never received anything from the realtor about the tenancy. If the realtor had told the landlords that the tenants wanted to stay, the landlords would have considered that after June 1, 2021 when the landlords received the call from India.

Analysis

The *Residential Tenancy Act* specifies that a landlord must act in good faith when ending a tenancy, and that a purchaser must use the rental unit to be occupied by a close family member; parent, spouse or child of the purchaser or the purchaser's spouse. The *Act* also specifies that the landlord must provide compensation equivalent to 1 month's rent, which I find has been accomplished by the landlord not collecting rent for the last month of the tenancy.

Additional compensation is set out in the *Act* as follows (bolding added by me):

51 (2) Subject to subsection (3), the landlord or, if applicable, **the purchaser** who asked the landlord to give the notice **must pay the tenant**, in addition to the amount payable under subsection (1), an amount that is the equivalent of **12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that**

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, **and**

(b) 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.

Section 49(6) (a) does not apply to this case.

I do not agree that tenants can claim compensation for the equivalent of their new tenancy, but 12 times the amount of the rent payable under the tenancy agreement that the tenants had with the landlord, or as against the purchaser who asked the landlord to give the notice to end the tenancy.

The *Act* goes on to state:

(3) **The director may excuse the** landlord or, if applicable, the **purchaser** who asked the landlord to give the notice **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.

That Section gives me the power to use my discretion to determine whether or not extenuating circumstances prevented the purchasers from accomplishing the stated purpose in the notice to end the tenancy.

I have reviewed all of the evidentiary material of the parties, and it is clear that due to COVID-19 a ban on international travel was made effective on April 22, 2021 for 30 days. The ban was extended to June 21, 2021 restricting all direct commercial and private passenger flights to Canada from India and Pakistan.

The purchasers gave the request to the selling landlord to issue the notice to end the tenancy on March 17, 2021, and it was served on March 19, 2021 effective on May 31, 2021.

I find that the purchasers had the intent of providing the basement suite to their parents, however by the time the purchasers became aware that the parents could not return to

Canada, on June 1, 2021, the tenants had already vacated the rental unit. I also accept the undisputed testimony of the purchaser that the purchasers did not receive any information from the realtor about the tenancy, such as how much rent they were paying when they resided in the rental unit or that the tenants wanted to stay, and that the purchasers had never met the tenants or the seller.

Given the ban on international travel, and the fact that the tenants had vacated the rental unit before the purchasers were aware that the parents could not occupy the rental unit, I find that extenuating circumstances existed preventing the purchasers from using the rental unit for the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property.

The tenants' application for compensation is hereby dismissed.

Since the tenants have not been successful with the application, the tenants are not entitled to recover the filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby 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 *Residential Tenancy Act*.

Dated: October 22, 2021

Residential Tenancy Branch