



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution submitted on April 26, 2021, by the Tenants filed under the Residential Tenancy Act (the “Act”) requesting a monetary order for compensation and the recovery of their filing fee. The matter was set for a conference call.

The Landlord’s counsel (the “Landlord”) and one of the Tenants (the “Tenant”) attended the hearing and were affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Tenant testified that they had been served with the Landlord’s documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue to be Decided

- Are the Tenants entitled to a monetary order for compensation pursuant to section 51 of the *Act*?
- Are the Tenants entitled to the recovery of their filing fee?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that the tenancy began on October 1, 2018, that they had been paying rent in the amount of \$2,200.00 per month when they received a Notice to end tenancy for Landlord's use of the Property on December 30, 2020. The Tenant testified that they moved out in accordance with that notice on February 28, 2021. The Tenant submitted a copy of the tenancy agreement and the Two-Month Notice into documentary evidence.

The Tenant testified that they believe that the Landlord son never moved into the rental unit, instead only staging the rental unit with minimal furniture to look occupied while residing in the main house. The Tenant is requesting the 12-month compensation due under the Act for the Landlord not using the property as indicated on their notice to end tenancy. The Tenant submitted seven pictures of the rental unit dated April 23, 2021, into documentary evidence.

The Landlord testified that the Landlord's son slowly moved into the rental unit starting the beginning of April 2021, that they have completely moved in and are still currently residing in the rental unit. The Landlord submitted a witness statement from the other renter living on the rental property, a copy of the Landlord's son's driver's licence and five pictures into documentary evidence.

The Tenant testified that the driver's licence provided by the Landlord for their son does not indicate unit B and that this supports their claim that the Landlord's son lives in the main house, not the mobile home.

The Landlord testified that the driver's licence lists the rental unit and that the B is not required as the construction on the main house has not been completed.

Analysis

Based on the above oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties that the Landlord served a Two-month Notice to end Tenancy for the Landlord's Use of the Property to the Tenants on December 30, 2020. Section 49 of the *Act* states the following:

Landlord's notice: landlord's use of property

49 (2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or....

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I have reviewed the Notice to end the tenancy, and I find that the Landlord issued this Notice pursuant to sanction 49(2) of the *Act*, stating that the Landlord or close family member intends to move into the rental unit.

The Tenant is claiming for compensation in the amount of \$26,000.00 pursuant to sections and 51(2) of the *Act*, which states the following:

Tenant's compensation: section 49 notice

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*

(a) 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

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

During the hearing, I heard contradictory testimony from both parties on the Landlord's use of the rental property after this tenancy ended. Normally, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, it is the Tenant who filed this claim; however, as it is the Landlord you issued the Notice to end tenancy, I find that it is the Landlord who holds the burden of proof to show that they did use the property for the stated purpose on their Notice.

After reviewing the testimony and the documentary evidence accepted into these proceedings, I find the witness statement combined with the testimony and other documentary evidence of the Landlord, that there is sufficient evidence before me, to prove to my satisfaction, that the Landlord did use the rental property for the stated purpose as indicated on their Notice to end tenancy. Consequently, I dismiss the Tenant's claim for compensation in its entirety.

Conclusion

The Tenant's 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 *Residential Tenancy Act*.

Dated: October 26, 2021

Residential Tenancy Branch