



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On May 20, 2021, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Landlords and Tenant were present at the hearing. At the start of the hearing, I introduced myself and the participants.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The Landlord confirmed that he received a copy of the Tenant’s documentary evidence. The Landlord did not submit any documentary evidence. The parties were informed that recording the hearing is not permitted.

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

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The Landlords and Tenant testified that the tenancy began on February 14, 2020. Rent in the amount of \$2,000.00 was due to be paid to the Landlord by the first day of each month.

The Landlords served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 29, 2020 ("the Two Month Notice"). The effective date of the Two Month Notice is December 31, 2020. The Tenant accepted the Two Month Notice and moved out of the rental unit on prior to the end of December 2020. The Tenant provided a copy of the Two Month Notice.

The reason cited by the Landlords for ending the tenancy within the Two Month Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member. The father or mother of the Landlord or the Landlord's spouse.

The Tenant stated that the Landlords never moved into the unit and occupied it for a six-month period. The Tenant stated that the Two Month Notice was not issued in good faith. The Tenant stated that in November 2020 the Landlord informed her that they have now decided to sell the home. The Landlord asked the Tenant to permit showings on November 14, 2020 and the Tenant agreed to permit this.

The Tenant testified that the Landlord received multiple offers and sold the home for \$250,000.00 over asking price. The Tenant provided a copy of the real estate listing showing that the home was listed for sale on November 9, 2020 for \$2,250,000.00. The Tenant testified that the home sold within one week.

The Tenant is seeking \$24,000.00 which is 12 months rent due under the tenancy agreement because the Landlord never accomplished the purpose stated on the Two Month Notice by occupying the unit, and instead chose to sell the home.

In reply, the Landlords confirmed that they issued the Two Month Notice to the Tenant and that the unit would be occupied by the father of the Landlord or Landlord's spouse. They stated that their father would be moving in.

The Landlords submitted that they purchased their dream farm in August 2020 which needed renovations, so they decided to move into the rental unit for 5-6 months. The Landlords testified that they chose to list the house for sale due during this time because of their previous experience of listing the home for sale and not selling it.

The Landlords stated that they believed it would take months to sell the house and did not expect it to sell right away. The Landlords stated they were following the advice of their realtor. The Landlords confirmed that the house sold in November 2020.

The Landlords stated that they had intended to live in the upstairs and have their father live in the basement unit. The Landlords confirmed that their father never moved into the basement unit, and they never moved upstairs.

The Landlords were asked if they have any exceptional circumstances that would excuse them from having to pay compensation to the Tenant for failing to occupy the rental unit, and they replied that their father-in-law has had multiple strokes over the past six months. The Landlords also stated that the purchaser was willing to discuss entering into a tenancy with the Tenant and a message was left with her about this; however, the Tenant never responded.

The Tenant stated that she spoke to the realtor but was already in the process of moving out.

Analysis

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement."

Section 51(2) of the Act provides:

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.

51(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 the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

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

Compensation for Breach of Section 51

I find that the Tenant received the Two Month Notice from the Landlords on October 29, 2020. I note that once a notice to end tenancy is issued it cannot be unilaterally rescinded without the permission of a tenant. I find that the Tenant accepted the Two Month Notice and moved out of the rental unit in accordance with the Notice.

I find the Landlord immediately sold the rental unit rather than occupying the rental property (basement unit) for the reason stated within the Two Month Notice, for a six-month period. Pursuant to section 51(2) of the Act, the Landlord must pay the Tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I have considered whether or not there were extenuating circumstances present that stopped the Landlord from accomplishing the stated purpose in the Two Month Notice. After considering the Landlord's submission regarding their stepfather's health, I note that the Landlord indicated that their father had strokes after the Landlord made their decision to sell the home. I find that their fathers health was not the reason why the Landlord changed their mind about occupying the lower rental unit.

I find that the Tenant was not obligated to respond to the Landlords' alleged offer to remain in the rental unit. I note that only the purchaser of the property would have authority to make an offer of a tenancy.

It appears to me that had the Landlord issued a Two Month Notice because the property had sold, the terms and conditions of the Tenancy would have remained intact, unless the purchaser had asked for vacant possession. Nevertheless, this did not occur, and I find that the Landlord issued the Two Month Notice indicating their father would occupy the rental unit and then they changed their mind and sold the property without occupying it for 6 months.

I find that the Landlords have not provided sufficient extenuating circumstances that prevented them or their family member from occupying the rental unit and would excuse them from having to pay compensation to the Tenant.

I award the Tenant the amount of \$24,000.00.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlords to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$24,100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord did not use the rental unit for the purpose stated within the Two Month Notice for a six-month period after the effective date of the Notice. The Landlord does not have an extenuating circumstance that would make it unjust for them to have to pay compensation to the Tenant.

The Landlords must pay the Tenant \$24,100.00 which is 12 months' rent payable under the tenancy agreement and the cost of the filing fee.

The Tenant is granted a monetary order in the amount of \$24,100.00.

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: November 25, 2021

Residential Tenancy Branch