



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement and to recover the filing fee from the landlords for the cost of the application.

The tenant and both named landlords attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The parties agree that evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation for the landlords' failure to use the rental unit for the purpose contained in a notice to end the tenancy for landlord's use of property?

Background and Evidence

The tenant testified that this month-to-month tenancy began on April 24, 2010 and ended on March 23, 2021. Rent in the amount of \$700.00 was payable on the 24th day of each month and there are no rental arrears. On April 19, 2010 the landlord collected a security deposit from the tenant in the amount of \$350.00, which has been returned in full to the tenant, and no pet damage deposit was collected. The rental unit is 1 of 2 basement suites, and the landlords lived in the upper level of the home during this tenancy.

Rent was increased during the tenancy and a copy of a Notice of Rent Increase has been provided for this hearing, which increased the rent by \$30.00 to \$730.00 per month commencing August 24, 2018.

The landlord served the tenant with notices to end the tenancy, and copies have been provided for this hearing. The first is a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 24, 2021 and containing an effective date of vacancy of April 1, 2021. It was served in person, and the reason for issuing it states, "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)," specifying the child of the landlord or landlord's spouse.

The tenant advised the landlords that the Notice was incomplete and the landlords gave the tenant another one. A copy of all pages of a Two Month Notice to End Tenancy for Landlord's Use of Property has also been provided. It is dated January 26, 2021 with an effective date of vacancy of April 23, 2021. The reason for issuing it states: "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)," specifying the child of the landlord or landlord's spouse.

The tenant was provided with compensation equivalent to one month's rent.

The tenant further testified that he drives by the rental home late at night frequently. Right after the tenant moved out the rental home had a For Sale sign, and then a Sold sign went up. Photographs have been provided for this hearing which the tenant testified were taken on July 26, 2021. A copy of a realtor listing has also been provided for this hearing showing that the home was listed for sale at \$1,999,000.00 and sold for \$2,243,000.00.

The tenant claims \$8,760.00 compensation for the landlord's failure to use the rental unit for the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property and recovery of the \$100.00 filing fee.

The first landlord (KJ) testified that the landlords' son was going to move in but the tenant made a big fuss about it from the beginning. The landlords' son moved in and wanted his privacy. The house was put up for sale due to the other landlord's illness on June 7, 2021. The landlords could not maintain the home, and the landlords' son age 33 years old also has issues. The house was listed for sale on June 7, 2021 and sold on June 14, 2021.

The landlords have provided a note from a Nurse Practitioner dated November 10, 2020 stating that the other landlord had brain surgery on November 9, 2020 and was advised to return to work gradually.

Another letter electronically signed by a medical doctor has also been provided for this hearing dated July 20, 2021 stating that the landlord has had significant and severe health concerns that worsened this past April, and as such has had difficulties maintaining his home and working, and has to downsize from his current home.

The second landlord (DJ) testified that the proper procedure was followed. The landlords' son needed privacy and the landlord has health issues so couldn't keep up the maintenance that he did prior. The landlords' son couldn't cut the grass, even though the landlord tried to teach him.

The landlords sold the house and their son came to live with the landlords.

Analysis

The *Residential Tenancy Act* is very clear: once a landlord serves a Two Month Notice to End Tenancy for Landlord's Use of Property the landlord must use the rental unit for the purpose contained in that Notice. If the landlord fails to do so for at least 6 months, the landlord must repay the tenant 12 times the monthly rent. Where extenuating circumstances exist, the landlord can be forgiven to not use the rental unit for that purpose.

I have reviewed all of the evidentiary material of the parties, and considering that the letters from the physician in November, 2020 and July, 2021 and the notice to end the tenancy is dated January 26, 2021, I am not satisfied that at that time the landlords' son could not occupy the rental unit. The landlord did not use the rental unit for the purpose contained in the Notice and I do not accept that the landlords' failure to do so is a result of extenuating circumstances. I am satisfied that the tenant has established a claim of 12 months rent, and I grant a monetary order in favour of the tenant as against the landlords in the amount of \$8,760.00.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$8,860.00.

This order is final and binding and may be enforced.

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 19, 2021

Residential Tenancy Branch