



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenant (hereinafter the “Tenant”) filed an Application for Dispute Resolution on June 16, 2021. They are seeking compensation related to the Landlords (the “Landlord”) ending the tenancy, and the Application filing fee.

The matter proceeded by hearing on January 10, 2022 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and offered each party the opportunity to ask questions. Each party confirmed they received the prepared evidence of the other and on this basis, I proceeded with the hearing of the primary issue listed below.

Issues to be Decided

Is the Tenant entitled to monetary compensation for the landlord ending the tenancy, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to recover the filing fee for the tenant’s Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The tenancy agreement in the evidence shows the tenancy started in 2015. The amount of rent as of the end of this tenancy was \$1,695. This amount is the basis for the Tenant’s claim for compensation based on a monthly rent amount.

The tenancy ended on January 3, 2021. The Landlord issued a Two-Month Notice to End Tenancy for Landlord’s Use (the “Two-Month Notice”) on November 30, 2020. The end-of-tenancy date specified on that document was January 31, 2021.

The Tenant here makes their claim on the basis that the Landlord did not use the rental unit for the stated purpose for the required amount of time. The reason indicated on the Two-Month Notice was for a family member to use the unit; however, the Tenant submits the Landlord listed the rental unit for sale in May 2021. This was *not* the required amount of time in line with the Landlord's stated purpose for ending the tenancy.

In the hearing the Tenant submitted the Landlord disclosed their intention to sell the unit in early summer 2020; however, these plans were put on hold. The Tenant worked with the Landlord on repairs and maintenance towards that sale.

The Tenant submitted documents to show the Landlord listed the property for sale:

- an online real estate listing for the rental unit showing "active" on May 25, 2021, and "sold 7 days on the market" by June 1, 2021;
- another listing showing the sale price, printed on June 16, 2021 as indicated by the document time stamp.

On their Application, the Tenant stated that the Landlord's own last day of occupancy was "late May/21".

The Landlord responded to the Tenant's Application to say they were considering a sale throughout 2019, and then made the plan to sell in February 2020. They initially met with an agent in March 2020; however, given public health concerns and the state of the market they did not proceed with a sale at that time. Through summer 2020 they made repairs and upgraded the rental unit, with the cooperation of the Tenant.

By November 2020, the Landlord's child approached them and explained that they needed help with their current living arrangement. The Landlord offered the rental unit to their own child, for the time period of around one year. This child ended their own separate lease elsewhere and moved into the rental unit on January 31, 2021.

In the hearing the Tenant took no issue with any of these points in the Landlord's account. The Tenant pointed back to the listings in May 2021, then showing the unit sold within a very short amount of time. This is contrary to the indication from the requirement, and the time-sensitive commitment for a family member to actually live in the rental unit after the tenancy ended for that reason.

The Landlord gave more detail on events that transpired post-tenancy. By May, they understood the market had improved. The listing provided by the Tenant – indicating 'sold' – does not indicate a full transfer of the property, and also does not mean the Landlord's ownership had ended at that time. The closing date on the sale was August 11, 2021, with the

new owner's actual possession date being August 12. Their child moved out from the rental unit on August 7, meaning the Landlord's used the rental unit for the stated purpose on the Two-Month Notice for at least 6 months.

The Landlord provided a direct written account from their child concerning these events. They were offered and accepted a job offer, and because of other factors decided to move out from their parents' rental unit after their circumstances had improved. The Landlord clarified with the Residential Tenancy Branch about a 6-month requirement for their family member's own use of the rental unit. They strictly ensured their agent abided by this requirement and would not accept any closing date earlier than what was required. The Landlord provided realtors' signed statements to attest to this.

Analysis

In this matter, the onus is on the Landlord to prove that they accomplished the purpose for ending the tenancy and that they used the rental unit for its stated purpose for at least 6 months.

Under s. 49 of the *Act* a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. There is compensation awarded in certain circumstances where a landlord issues a Two-Month Notice. This is covered in s. 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 . . . 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 of 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.
- (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying . . . if, in the director's opinion, extenuating circumstances prevented the landlord . . . 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.

On my review of the present matter, I find the Landlord accomplished the stated purpose for ending the tenancy. The evidence shows they used the rental unit for the reason indicated, for at least 6 months' duration. I give weight to the evidence provided by the Landlord, as well as their direct account in this hearing.

I accept that the new owner's possession date of the unit was August 12, 2021. This makes the Landlord's own family member's use of the rental unit over 6 months in duration. A status of 'sold' on a real estate listing does not indicate a transfer; therefore, the Landlord's ownership of the unit did not end. I accept as fact that their child occupied the rental unit as stated in the evidence, and minus evidence to the contrary.

The Landlord's evidence with its detailed explanation has reference to dates, family events, and other family members. This carries more weight than the evidence presented by the Tenant. I find it is acceptable that their family member occupied the rental unit until August 2021, after which time a new owner took possession of the rental unit.

I find the Landlord has overcome the burden of proof. That is to say, the Landlord's evidence is stronger in showing they used the rental unit for the stated purpose. I conclude that s. 51(2) does not apply in this situation, and there is no monetary award to the Tenant here. I dismiss the Tenant's claim, without leave to reapply.

Because they were not successful in this claim, I find the tenant is not entitled to recover the \$100 filing fee.

Conclusion

I dismiss the tenant's Application, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 11, 2022

Residential Tenancy Branch