



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 tenant seeking monetary compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property 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 tenant advised that all of the tenant's evidence has been provided to the landlords, and the tenant has received evidence from the landlords. The landlords did not dispute that, and all evidence provided by the parties 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 compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The tenant testified that this month-to-month tenancy began in August, 2017 and ended on December 1, 2020. There never was a written tenancy agreement, however rent in

the amount of \$2,200.00 was payable on the 1st day of each month, and in January, 2020 rent was decreased to \$1,800.00 per month with the landlord's consent at that time. There are no rental arrears, no security deposit or pet damage deposits were collected from the tenant. The rental unit is a full house with a basement.

On September 30, 2020 the real estate agent served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice). Copies of the first 2 pages of the 4-page Notice have been provided as evidence for this hearing. It is dated September 30, 2020 and contains an effective date of vacancy of December 1, 2020. 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 a close family member intends in good faith to occupy the rental unit.

The tenant met the purchasers, who gave the tenant the impression that they would continue to rent to the tenant if the tenant would agree to an increase in rent, and the tenant disagreed. The next day, the tenant received the Notice.

The tenant has been past the rental home many times and lives and does business in the same neighbourhood. The tenant received some information from a neighbour who advised that the current owners do not live in the rental house; it sat empty until approximately February, 2021 and then a family moved in. The neighbour said that he met the new tenants, spoke to them and they confirmed they were tenants, not the owner. No vehicles except the 2 belonging to the tenants are in the driveway.

Further, the tenant spoke with the neighbour today who said that it appeared a new tenant lived in the basement, as well as a young man. The landlords are not young men.

The tenant also spoke to the new tenants this morning and they still live in the top portion of the house and advised that the landlords lived in the lower level, and both vehicles belong to the tenants.

The tenant further testified that the landlords had no intention of living on the property, but would sub-divide the house and rent it out.

The first landlord (GB) testified that when the landlords purchased the property, they spoke to the tenant and advised that the tenant could stay upstairs and the landlords

would occupy the downstairs level, and asked for more rent. The tenant had sublet the lower level of the home to someone else.

Since taking possession, the landlords have blocked the 2 levels of the home and live in the lower level. The upper level has been re-rented.

The second landlord (PW) testified that the plan was to use the basement so that when the landlord goes to the area, he has a place to stay. The landlord is currently in Alberta. However, the landlord hasn't been able to occupy it lately due to travel restrictions due to COVID.

No kitchen was installed in the basement area; the landlord was taking food there and has a hot plate, fridge and fryer. The 2 landlords don't stay there at the same time.

The landlords were honest with the tenant; that the landlords only wanted to occupy the basement and didn't know they couldn't re-rent a portion of the home.

Analysis

The *Residential Tenancy Act* requires a landlord to accomplish the stated purpose for ending a tenancy for the landlord's use of the property for at least 6 months after the effective date of the notice to end the tenancy. A landlord may not require a tenant to move out and then re-rent any portion of the rental unit. The consequences are quite severe: 12 times the monthly rent payable under the tenancy agreement.

In this case, the landlords re-rented the upper level of the house and modified only the lower level for the landlords' use of the property. I accept that the landlords were not aware that they could not re-rent a portion, however I find that the tenant is entitled to the compensation of 12 times the monthly rent, or \$21,600.00 (\$1,800.00 x 12).

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 \$21,700.00.

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: January 14, 2022

Residential Tenancy Branch