



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 tenants seeking monetary compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property, and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing and each gave affirmed testimony. The landlord was also accompanied by an adult child of the landlord who assisted the landlord with translation.

The landlord has not provided any evidentiary material, however the tenants advised that the landlord has been provided with all of the tenants' evidence. The landlord did not dispute that, and all evidence of the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The first tenant (LS) testified that the tenants resided in the rental unit for 5 years, however a tenancy agreement has been provided for this hearing stating that the tenancy was for a fixed term commencing August 1, 2019 and reverted to a month-to-month tenancy after July 31, 2020. The tenant testified that the tenancy ultimately

ended on October 26, 2020. Rent in the amount of \$2,357.00 was payable on the 1st day of each month and there are no rental arrears. On March 20, 2015 the landlord at that time collected a security deposit from the tenants in the amount of \$1,100.00, all of which has been returned to the tenants, and no pet damage deposit was collected. The rental unit is a single family dwelling.

The tenant further testified that on August 5, 2020 the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) by regular mail and a copy has been provided for this hearing. It is dated August 5, 2020 and contains an effective date of vacancy of October 31, 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 testified that the tenant was not notified that the rental home had sold until the tenants received the Notice.

The landlord respondent in this matter is the purchaser. The tenants moved out in accordance with the Notice, and received compensation equivalent to 1 month's rent.

The tenant was still looking at rental advertisements, and found one for renting the same rental unit in December, 2020. Copies of advertisements have been provided as evidence for this hearing.

The second tenant (JS) testified that at no time were the tenants given an option to stay and had a very big problem trying to find another home. It was likely the most impactful and hard issue that the tenant had to deal with in the tenant's life. It was very hard to uproot the family. The tenants had no control, and had to go with what was happening.

The tenants claim 12 times the monthly rent, or \$28,284.00 and recovery of the \$100.00 filing fee.

The landlord testified with the assistance of the translator that during the purchase contract, signed on April 14, the contract had a condition of vacant possession and tenant free. The landlord intended to rebuild when the rental home was purchased, however in December, due to COVID-19, the landlord decided to postpone the re-build and re-rent.

The rental unit was re-rented for January, 2021 for \$4,000.00 for the full property. However after the first month, rent hadn't been paid. The landlord made a complaint to the Residential Tenancy Branch in February, 2021, and the tenant moved out in August, leaving severe damage to the property.

The landlord also testified that when the contract for purchase was signed, the landlord asked the realtor about occupancy, but the landlord was not told anything about restrictions to re-rent.

Analysis

The *Residential Tenancy Act* sets out consequences if a landlord fails to use a rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property, as follows:

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 the landlord or purchaser, as applicable, does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The law also states that I may excuse the landlord, or purchaser who asked the landlord to give the Notice from paying the tenant the amount required, if, in my opinion, extenuating circumstances prevented the landlord or purchaser from accomplishing the stated purpose or using the rental unit for that purpose for at least 6 months.

In this case, the landlord testified that the realtor didn't tell the landlord about that requirement, but I do not find that to be an extenuating circumstance.

I find that the landlord did not use the rental unit for the purpose contained in the Notice, and did not use the rental unit for the landlord's occupancy for at least 6 months, but advertised the rental unit for rent within 2 months after the tenancy ended.

I find that the tenants have established a monetary claim of 12 times the monthly rent of \$2,357.00, or \$28,284.00.

Since the tenants have been successful with the application, the tenants are 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 tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$28,384.00.

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 19, 2022

Residential Tenancy Branch