



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with an application by the tenants under the Residential Tenancy Act (the Act) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenants for the filing fee pursuant to section 72.

The tenants and the landlords attended. All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties confirmed the email addresses to which the Decision would be sent.

Preliminary Matter - Prohibition Against Recordings

The parties were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. Both parties confirmed their

understanding of the requirement and further confirmed they were not making recordings of the hearing.

Issue(s) to be Decided

The parties agreed on the background of the tenancy as follows. The tenancy began on August 1, 2012 and ended when the tenants moved out on April 1, 2021. Monthly rent was \$1,750.00/ The security deposit of \$750.00 was returned to the tenants.

The unit was an upstairs apartment in an older residential home. The tenants lived in the unit with their five children. The lower floor also contained another apartment.

The landlord purchased the building in October 2020.

The previous owner served a Two Month Notice to End Tenancy for Landlord's Use of Property from the Landlord ("the Two Month Notice") on September 26, 2020 with an effective date of December 1, 2020. A copy of the Two Month Notice was submitted which is in the standard RTB form.

The reason cited for ending the tenancy is as follows:

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 Two Month Notice provides information for tenants who receive the Notice. The Notice provides that a tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a tenant does not file an Application within 15 days, the tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

The tenants accepted the Two Month Notice and did not file an Application for Dispute Resolution.

However, the tenants testified they had difficulty locating a place to move to that was affordable and large enough for their family. The tenants requested more time to move out. The landlords agreed the tenants could have more time. The parties then signed two documents:

1. a Mutual Agreement to End Tenancy (“the Agreement”) dated October 28, 2020 in which the tenants agreed to move out on April 1, 2021.
2. A 1-page untitled and undated documents (“the Cancellation Document”)

The parties signed both documents at the same time on October 28, 2020.

The Agreement is in the standard RTB form. A copy of the signed Agreement was submitted as evidence. Part of the Agreement stated as follows, emphasis added:

NOTE: This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). **If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy.** If you have questions about tenant or landlord rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.

...

The parties recognize that the tenancy agreement between them will legally terminate and come to and end at the date and time stated above. It is also understood and agreed that this agreement is in accordance with the Residential Tenancy Act and the Manufactured Home Park Tenancy Act which states: “The landlord and tenant agree in writing to end the tenancy.”

The Cancellation Document stated in its entirety as follows, as written, emphasis added:

[addressed to tenants from landlords]

Tenant and current Landlord **now agrees to cancel the “two Month Notice to End Tenancy for Landlord’s Use of Property”** served to the tenant I September 2020 by the previous owner [name] for the proper [address].

Signed on: [blank]

Signed by:

[landlords’ signatures]

[tenants’ signatures]

As compensation, the tenants did not pay rent for the month of November 2020.

The landlords argued that the Agreement and Cancellation Document terminated the Two Month Notice and ended the right of the tenants to the 12 months’ compensation.

The tenants disagreed with the landlords’ interpretation of the effect of either or both documents. They testified there was never any discussion about their abandoning their rights under the Act to claim for compensation and they did not intend to do so. They testified that the sole purpose of the documents was to change their moving out date. They submitted copies of texts between the parties in which only the move out dates are discussed.

The tenants moved out on the new vacancy date of April 1, 2021.

The landlords acknowledged they did not move into the unit. They were provided an opportunity to make submissions on whether there were circumstances that prevented the landlords from using the rental unit for the stated purpose for at least 6 months duration after the effective date of the notice as modified by the Agreement and Cancellation Document.

The landlords testified that they investigated the cost of renovations after the purchase. They hired a designer and arborist but not a contractor. The landlords testified they applied for a building permit in February 2021 which was never granted. The landlords stated they eventually realized from their inquiries that the renovations were more expensive than they anticipated partially because of unanticipated cost increases related to the pandemic. They concluded the renovation costs were unaffordable for them. They testified that no renovations took place. No evidence was submitted regarding their renovation budget or the estimated cost of repairs.

The landlords testified they listed the house for sale in September 2021 and sold the house a month later.

The landlords testified that neither the landlords nor a close family member occupied the unit from the time the tenant vacated until the unit was sold because of the unexpected cost of renovations. The landlords also asserted the tenants gave up any right to compensation under either the Agreement or the Cancellation Document.

As the landlords did not move into the unit as required under the Act, the tenants claimed compensation of twelve months' rent and reimbursement of the filing fee.

Analysis

Burden of Proof

Rule of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application."

The tenants have applied for a monetary award in the amount of 12 months rent and must therefore demonstrate their entitlement to an award based on a breach of the Act, their tenancy agreement or the Regulations.

Ending a Tenancy

Section 44(1) of the Act states, "A tenancy ends only if one or more of the following applies. (a) the landlord gives notice to end the tenancy in accordance with one of the following:

How a tenancy ends

44(1) A tenancy ends only if one or more of the following applies:

- (a) the [...] landlord gives notice to end the tenancy in accordance with one of the following:

(v) section 49 [landlord's notice: landlord's use of property];

...

(c) the landlord and tenant agree in writing to end the tenancy;

Section 51 (2) of the Act provides:

(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

(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.

The tenants were provided with Two Month Notice under section 49(5). However, this Two Month Notice was cancelled by the Mutual Agreement and the Cancellation Document signed by the parties on October 28, 2020. The tenants' right to compensation under section 51(2) was therefore terminated.

While I accept that the tenants were informed by the landlords of their intention to occupy the property, I find that I have no power to issue any compensation.

The tenants' application is therefore dismissed without leave to reapply. The tenants must bear the cost of their own filing fee.

Conclusion

The tenants' application is dismissed without leave to reapply.

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: February 4, 2022

Residential Tenancy Branch