



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing dealt with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- compensation from the landlords related to receiving a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued to the tenants.

The tenant and the landlord's agent (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were informed prior to the hearing that they were not allowed to record the hearing.

The parties confirmed receiving the other's documentary and digital evidence in advance of the hearing. The agent confirmed receipt of the tenants' application.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlords because they received a Two Month Notice from the landlords?

Background and Evidence

The undisputed evidence is that this tenancy began on May 15, 2019, and ended on July 14, 2021. The monthly rent at the beginning and end of the tenancy was \$2,800. Filed into evidence was a copy of the written tenancy agreement.

The tenant said that they vacated the rental unit in response to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice).

This Notice was signed and issued by the landlord, JR, was dated April 28, 2021, listing an effective move-out date of July 14, 2021. Filed into evidence was a copy of the Notice.

As a reason for ending the tenancy, the Notice listed that the rental unit will be occupied by the landlord or the landlord's spouse.

The tenants submitted further that they chose to accept that the tenancy was ending due to the Notice and vacated the rental unit on July 14, 2021.

In support of their application, the tenant said they discovered that the rental unit was for sale shortly after they vacated. The tenant submitted that the home was listed for sale by July 19, 2021, and was sold on July 27, 2021.

The tenants filed a copy of the real estate listing showing the house for sale and another listing showing the house sold. Additionally, the tenants filed a photograph showing a "for sale" sign in the yard of the rental unit.

The tenants submitted that they are entitled to compensation equivalent to 12 months' rent of \$33,600, as the landlord has not used the rental unit for the stated purpose listed on the Notice.

The tenant submitted that they did not agree that the landlords could retract the Notice.

Landlords' response-

The landlord JR submitted a written statement, in which the landlord stated that they were planning on moving into the rental unit and issued the tenants the Two Month Notice. The landlord submitted that on or around June 23-24, they were informed that their offer on another property was accepted, and they purchased that property instead of moving into the rental unit.

The landlord submitted that they phoned the RTB and were told they could retract the Notice, and they did so, in "good faith", when they informed the tenants they could resume the tenancy. Filed in evidence was an email from landlord TH to the tenant MS, dated June 25, 2021, with the retraction notice.

Also filed in evidence by the landlords was the real estate board listing for the residential property showing the listing date was July 19, 2021, and the sold date was July 27, 2021.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

On the basis of the undisputed evidence, I find the landlords issued the tenants a Two Month Notice for landlord's use, dated April 28, 2021, for an effective move-out date of July 14, 2021, and that the tenants chose to accept the Notice, vacating the rental unit on July 14, 2021.

On the basis of the undisputed evidence, I find the tenants were paying the monthly rent of \$2,800 at the end of the tenancy.

On the basis of the tenants' and the landlords' evidence, I find the landlord or the landlord's spouse did not occupy the rental unit at any time as the rental unit was listed for sale on July 19, 2021, and was sold on July 27, 2021.

For all these reasons, I therefore find the landlords are not using and has not used the rental unit for the stated purpose listed on the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 51(2) provides that if 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 if 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 tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

Tenancy Policy Guideline 11.C states that a "landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given."

I therefore find the tenants are entitled to monetary compensation equivalent to 12 months' rent, due to the landlords' breach of the Act.

As a result, I find the tenants have established a monetary claim of **\$33,600**, the equivalent of monthly rent of \$2,800 for 12 months.

Under section 72(1) of the Act, the director may order payment of a fee for starting a dispute resolution proceeding. I find it appropriate to award the tenants recovery of their filing fee of **\$100**, due to their successful application.

For the above reasons, I grant the tenants a monetary award of **\$33,700**.

Conclusion

The tenants' application has been granted in full, and I have granted the tenants recovery of their filing fee of \$100. The tenants are provided a monetary order in the amount of \$33,700.

Should the landlords fail to pay the tenants this amount without delay, the tenant must serve the landlords the order to be enforceable. The landlords are **cautioned** that costs of such enforcement are recoverable from the landlords.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 7, 2022