



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Proline Management
and [tenant name suppressed to protect privacy]

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 notice to end the 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 an agent for the landlord attended the hearing and each gave affirmed testimony. The landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established that the landlord has failed to accomplish the stated purpose for issuing a notice to end the tenancy for landlord's use of property within a reasonable time after the effective date of the notice?

Background and Evidence

The first tenant (SS) testified that this fixed-term tenancy began on August 1, 2020 and reverted to a month-to-month tenancy after July 31, 2021, which is when the tenancy ended. Rent in the amount of \$1,600.00 was payable on the 1st day of each month, and there are no rental arrears. On July 21, 2020 the landlord collected a security deposit from the tenants in the amount of \$800.00, which has been returned to the tenants in

full. The rental unit is a basement suite, and the upper level of the home was also rented.

The tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a portion of that Notice has been provided for this hearing. It is dated May 20, 2021 and contains an effective date of vacancy of July 31, 2021. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse.

The tenant further testified that after moving out of the rental unit, the tenant suspected that the landlord would not move in, so went back several times and found the rental unit empty; nothing had been done to indicate that anyone had been around. Even the recycle bins remained in the same place that the tenant left them, and there was no movement whatsoever. The tenant went to the rental home throughout the month of August and into September, 2021, the last time being on the 9th or 10th of September. Photographs taken through the window of the rental unit have been provided as evidence for this hearing.

Essentially, the landlord did not move in or repossess and live in the rental unit as stated in the Notice.

The second tenant (NT) testified that she went to the trail running along the property on September 19, 2021 and found the recycle bins had not been moved, blinds were left the same way as they were at move-out, and no furniture was in the rental unit. The tenant had been away at sea for a month prior.

The landlord's agent testified that on the landlord's agent gave the tenants the notice to end the tenancy on or about May 20, 2021 at the direction of the owner on April 14, 2021, that the owner would be retaking the property for the owner's personal use.

It's been 7 months and 14 days since the tenancy ended and the owner has been using the rental unit for personal use when the owner is in town working. The owner's father is in care in the community, and a letter from the current tenants in the lower level of the home has been provided for this hearing to confirm that.

The landlord's agent has had multiple telephone conversations with the owner since being served with the Application and notice of this hearing, and was advised that the

owner lives there from time to time and was there a week ago. The owner has not re-rented.

Currently there is furniture and photographs have been provided for this hearing showing the owner's belongings.

The landlord's agent also testified that the property management company no longer acts as agent for either of the rental suites; the agreement with the owner ended on July 31, 2021, and the company should be removed as a respondent. The tenancy agreement specified the landlord company as authorized agents for the owner.

The landlord's witness (SB) is the **owner** of the rental property and testified that he instructed the landlord property management company to issue the notice to end the tenancy for landlord's use of property. The witness lived on Vancouver Island and intended to move to the rental unit. The witness' father was transferred from a care home in the Okanagan to Vancouver Island, and the witness can now work remotely in either the Okanagan or Vancouver Island.

The tenants claim that the landlord didn't occupy the rental unit within a reasonable time. However, in May, 2020 the landlord's mother-in-law died of COVID in Prince Edward Island, and the Province gave permission in mid-July for visitors. The witness did not go, but remained to take care of pets and the witness' child; the border was shut prior that. The border was closed from May, 2020 to August, 2021, and it took over a year for the witness' spouse to go there for closure.

On September 6, 2021 the landlord's spouse returned from Prince Edward Island and found the rental unit damaged by a burst pipe. The repair was covered by insurance, and it took until September 28, 2021 to make it inhabitable. A copy of the insurance claim has been provided for this hearing, and it is dated September 28, 2021. The owner's furniture was moved into the living room and bedroom of the rental unit in early September, then was shut down due to the water damage. Kitchen items were taken into the rental unit in March, 2022. The witness could not get there earlier because the highways had been shut down. The last trip to move in was on March 7, 2022.

The owner did not re-rent the rental unit and never intended to. The owner continues to use it and has no plans to re-rent. All legal protocol has been followed and the owner has not mislead anyone.

SUBMISSIONS OF THE TENANTS:

Evidence for August and September, 2021 show that the rental unit was unoccupied. There was no clear intention for the owner to occupy it as set out in the Two Month Notice to End Tenancy for Landlord's Use of Property.

SUBMISSIONS OF THE OWNER:

The owner did not intend to do anything outside the rules, and adequate notice to end the tenancy was give to the tenants. The owner and family lost the month of August due to the passing of the owner's spouse. Flooding occurred during the 2nd week of September preventing the move. Evidence has been provided by the tenant in the other suite indicating that the rental unit has not been re-rented and that the owner has moved furniture in.

Analysis

Firstly, the definition section of the *Residential Tenancy Act* states that a landlord includes the owner, an agent or another person who, on behalf of the landlord permits occupation under a tenancy agreement or exercises powers and performs duties under the *Act* or the tenancy agreement; and includes a former landlord, when the context requires. In this case, the tenancy agreement names the landlord company set out in the tenants' application, as authorized agents for the owner. Therefore, I find that the tenants have named a correct landlord as respondent.

The *Act* also states that if a landlord fails to accomplish the stated purpose for ending a tenancy for landlord's use of property within a reasonable time after the effective date of the Two Month Notice to End Tenancy for Landlord's Use of Property, the tenants would be entitled to compensation equivalent to 12 times the monthly rent. It also states that if I find that extenuating circumstances existed that prevented the landlord from accomplishing that stated purpose, I may excuse the landlord from paying the compensation.

In this case, the effective date of vacancy in the Notice is July 31, 2021.

The landlord's witness is the owner of the rental home and testified to a number of issues that prevented the owner from moving in. I think I can take judicial notice that the Prince Edward Island government closed the border during the time specified from May, 2020 to August, 2021, and I accept that testimony. I also accept the undisputed testimony of the owner that the owner didn't go to Prince Edward Island, but stayed in

the owner's previous residence to take care of animals and a child. He also testified that the rental unit flooded and was not inhabitable until September 28, 2021, and has provided a copy of the insurance claim to substantiate that testimony. I also accept that the highways were closed.

I have considered all of the testimony and evidence provided by the parties, and I find that the owner's reasons for not moving into the rental unit until September, 2021 are justified and were beyond the owner's control. I find that extenuating circumstances existed that prevented the owner from accomplishing the stated purpose for ending the tenancy.

The tenants' application is dismissed.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety 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: March 17, 2022

Residential Tenancy Branch