



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MacDonald Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNETC**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51.

The tenants attended the hearing and were accompanied by their respective spouses. The landlord attended the hearing and was represented by counsel, KY. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenants' Notice of Dispute Resolution Proceedings package and the tenants acknowledged service of the landlord's evidence. Both parties stated they had no concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

On the tenancy agreement, the two tenants as reflected on the cover page of this decision were named as tenants and their respective spouses are named as occupants. The application for dispute resolution names the tenants' spouses as tenants, which

they are not, according to the tenancy agreement. In accordance with Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I have amended the tenants' application for dispute resolution to remove the tenants' spouses' names and only the named tenants on the tenancy agreement appear on the cover page of this decision.

Issue(s) to be Decided

Did the landlord fail to use the rental unit for the stated purpose on the notice to end tenancy for a period of at least 6 months?

Background and Evidence

The landlord's counsel gave the following submissions. The fixed one-year tenancy began on May 1, 2020, becoming month to month at the end of the May 2021.

In January 2021, the landlord and her spouse sold their primary residence. The landlords decided to move into the rental house they owned, the unit in dispute for this hearing. The landlords served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use with an effective date of April 30, 2021 and gave the tenants the equivalent of one month's free rent as required under the *Act*.

The tenants twice sought extensions of the effective date and the landlord agreed that May 11, 2021, would be the date for the tenants to vacate the unit. The landlords moved into the unit on May 24, 2021. In mid-July 2021 the landlord was informed that her father overseas had lung cancer and the landlord went back overseas to take care of him. The landlord's spouse continued to live in the house formerly occupied by the tenants.

The landlord's father's illness continued, and the landlord decided to stay overseas indefinitely. The landlord's spouse decided to join the landlord overseas and they listed the house for sale in September 2021. The landlord accepted an offer on October 14, 2021, and the date of possession was set for January 14, 2022. A copy of the contract of purchase and sale was provided as evidence.

The landlord submits that the landlord's spouse continued to reside in the house up to the date of possession, or January 13, 2022.

In evidence, the landlord provided utility statements to corroborate their assertion that they sold their former primary residence and moved into the house previously rented by the tenants. They also provided (translated) medical documents to show the landlord's

father did, in fact, have cancer, as well as documents to prove the matrimonial status of the landlord and her spouse.

The landlord submits that although they put the former rental unit on the market before they occupied it for 6 months, the landlord's spouse continued to occupy it between May 24, 2021 and the date the purchasers took possession, January 14, 2022.

The tenant MH gave the following testimony. The first fixed 2 year tenancy began on May 1, 2017, and was renewed for one year in 2019. On May 1, 2020, it was renewed again for another year. In January 2021, the tenants sought to renew it again but the landlords did not agree to the renewal.

When they received the landlord's 2 Month Notice to End Tenancy for Landlord's Use, 3 of the 4 occupants of the rental unit were suffering from Covid-19 and they were grateful to the landlord for allowing them to stay until May 11th. On August 4, 2021, they were alerted to the fact that the landlord had listed their former rental house for sale. It was removed from the MLS a month later then relisted again. They filed the application for dispute resolution because it did not appear to them that the landlords intended on living in it as a home but to sell it.

Subsequent to being evicted, the two couples were unable to find a home together and had to find separate housing for each couple which costs more in rent.

Analysis

Section 51(2) of the *Act* states:

(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.

Residential Tenancy Branch Policy Guideline PG-50 [Compensation for Ending a Tenancy] states that **the onus is on the landlord** to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

In the case before me, the reason for ending the tenancy was for the rental unit to be occupied by the landlord or the landlord's spouse. I find the landlord has provided sufficient evidence to satisfy me that they took possession of the rental unit on May 24, 2021 and moved into it. I base this finding on the utility statements in the landlord's spouse's name which corroborates their assertion that they changed residences as they argue. These utilities appear to show consistent use up until January 2021 when the new purchasers took possession of it.

The landlord does not deny that she did not occupy the rental unit for 6 months after the tenants vacated the rental unit however it is apparent to me that the landlord's spouse continued to occupy it between May 24, 2021, and January 14, 2022. There is no obligation under the *Act* for the landlord to refrain from putting the former rental unit on the market after moving in; the landlord can only be found to be in breach of the *Act* if they fail to occupy it for at least 6 months. In this case, I find no breach of the *Act* since the landlord's spouse occupied the house for a period of almost 8 months.

Consequently, I dismiss the tenant's application seeking compensation under section 51(2) of the *Act*.

Conclusion

The 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: March 18, 2022

Residential Tenancy Branch