



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for compensation from the purchaser related to a Notice to End Tenancy for Landlord's Use of Property, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. The parties confirmed they were not recording the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

The tenant has listed SC as a tenant in their application; however, SC was the roommate of the tenant. SC is an occupant who has no legal rights or obligations under the Act. Therefore, I have removed SC from the style of cause.

Issue(s) to be Decided

Is the tenant entitled to compensation?

Background and Evidence

The parties agreed that the tenant received a Two Month Notice to End Tenancy for Landlord's Use of Property, with an effective vacancy date of August 1, 2021.

The reason stated in the Notice was that,

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 purchaser testified that they took possession of the property on August 4, 2021, and they moved into the property on August 14, 2021. The purchaser stated they have been using the entire premise for their own use. Filed in evidence is a usual receipt and various letters in support.

The purchaser testified that have been living at the premises since August 14, 2021 and have been making the home suitable for their family. Filed in evidence are utility invoices. Filed in evidence are photographs, of the bedroom fully set up, an office and a living room. Filed in evidence is a subscription for food service delivery and receipts for other food delivered to the premise and a declaration to the city that the vacancy tax would not apply because this is their principal residence and homeowner's.

The tenant testified that took a video on August 11, 2021, of the outside of the premises. The tenant stated that they believe they were seen by the owner, and they believe they just hired a usual to fabricate evidence. The tenant stated that the landlord did not provide any pictures of the bathroom, kitchen or laundry room.

The tenant testified that there was also a stop work order that was not removed from the door of the upper floor, this support the landlord was not living there and they believe the landlord gutted the main floor of the house. I note this is not the tenant's rental unit as they only possessed the basement area.

The purchaser responded that there was a work stop order placed on the door; however, this was only because a neighbour had complained about noise they had heard when they were renovating the bathroom in the main portion of the house. The purchaser stated the work order was cancelled as they were simply fixing up the home for their own use.

The purchaser responded that the only thing they have done to the basement area, to which the tenant rented is paint the fireplace and repair a cabinet and that they are using this portion of the premise for their own use.

Analysis

Section 51 (2) of the Act provides:

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. [my emphasis]

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, the purchaser took possession of the property on August 4, 2021, and moved in on August 14, 2021. This is supported by utilities invoices, uhaul receipts, letters and photographs and declaration to the city.

Simply because the purchasers moved their furniture into the property three days after the tenant was filming the property does not prove anything, as the purchasers are entitled to take steps within a reasonable time to move into the premises, which they did as it was 10 days after they took possession of the premises.

Further, while the tenant was filming the premises on August 11, 2021, the homeowner was present at this time as they came out of the premises during the video.

Also, the tenant has raised issues that are not related to their tenancy as they only rented the basement portion of the premises, not the main floor of the premises. A new purchaser has the right to make the home suitable for their own needs, such as painting

and make other cosmetic changes as long as they are using the premises for their own purpose.

Based on the above, I am satisfied that the purchaser has met the requirements of the Notice. Therefore, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's 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 22, 2022

Residential Tenancy Branch