



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing was convened by way of conference call in response to the Tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act") in which the Tenants seek:

- compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated April 8, 2021 (the "2 Month Notice"); and
- authorization to recover the filing fee of their application from the Landlord.

One of the two Tenants ("AS") appeared at the hearing with an advocate ("KC"). The Landlord appeared at the hearing with Legal Counsel ("LC"). I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

KC stated the Tenants served the Landlord with the Notice of Dispute Resolution Proceeding ("NDRP") by registered mail on September 16, 2021. KC provided the Canada Post tracking number for the registered mail service of the NDRP on the Landlord. I find the NDRP was served on the Landlord in accordance with the requirements of section 89 of the Act.

KC stated that, by agreement with LC, the Tenants served their evidence on the Landlord by email on March 1, 2022. Although service of the Tenants' evidence was sent one day late under the Rule 3.14 of the RoP, LC was agreeable to it being admitted for the hearing. I find the Landlord was served with the Tenants' evidence in accordance with the provisions of section 88 of the Act.

LC stated the Landlord served the Tenants with Landlord's evidence on March 7, 2022 by email. KC acknowledged receipt of the Landlord's evidence on the Tenants. I find the Tenants were served with the Landlord's evidence in accordance with the provisions of section 88 of the Act.

Issues to be Decided

Are the Tenants entitled to:

- compensation from the Landlord in relation to the 2 Month Notice?
- recover the filing fee of their application?

Background and Evidence

The rental unit is a Coach House ("rental unit" or "Cottage"). The Cottage is located on the same residential property ("Property") as the house ("House") in which the Landlord currently resides. The parties agreed the tenancy commenced on October 15, 2019, for a fixed term ending October 15, 2020, and continued on a month-to-month basis thereafter. The Tenants were required to pay rent of \$1,750.00 on the 15th day of each month.

The Landlord served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use dated April 8, 2021 ("2 Month Notice") on or about April 8, 2021. The 2 Month Notice stated the reason for ending the tenancy was the rental unit would be occupied by the Landlord's father or mother. The effective date of the 2 Month Notice was July 1, 2021. AS stated the Tenants vacated the rental unit on June 29 or 30, 2021.

LC stated the Landlord purchased the property about 5 ½ years ago. The Landlord stated she rented the Cottage to a tenant shortly after the purchase of the Property until that tenant vacated and then she rented the Cottage to the Tenants. LC stated Notices of Rent Increase were served on the Tenants in 2020 but they were cancelled due to the government imposing COVID-19 moratoriums on rent increases.

LC stated her mother and father (individually the "Mother" or "Father" and collectively the "Parents") moved into the Cottage shortly after the Tenants vacated it at the end of June 2021. LC stated the Father died in the Cottage on December 6, 2021. LC stated the Mother is 81 and she is mobile. LC stated the Parents were living in the lower suite ("Suite") of the House prior to moving into the Cottage. LC stated the Cottage is approximately 1,500 square feet and has a kitchen and living room that are approximately double the size of the kitchen and living room in the Suite. LC stated that,

because of declining health, the Parents required a medical style bed. LC stated the medical bed would not fit in to the bedroom of the Suite but did fit into the ground floor bedroom of the Cottage.

LC stated that, at the time the Parents moved into the Cottage, the Mother was fully mobile with a cane while the Father was able to walk with assistance. LC stated that the Cottage was fully furnished when the Parents moved into it. LC stated the Parents did not use the upper floor of the Cottage. LC stated the Mother has continued to live in the Cottage after the Father died. The Landlord stated she provided assistance to the Parents while the Father was alive and, after the Father's death, she continues to provide assistance to her mother. LC stated that, while he was alive, the Father received bed care and did not require use of the tub or shower. LC submitted the following into evidence:

1. letter from a family physician ("JM") in stating she saw the Parents in a medical home visit on August 31, 2021 in their residence at the Cottage;
2. letter from a Pastor dated March 1, 2022, in which the Pastor confirms he made two pastoral visits on the Parents at the Cottage on August 3 and November 2021;
3. letter from JM confirming she made medical home visits on the Parents at the Cottage in October and December 2021; and
4. Funeral Director's Statement of Death dated April 3, 2022 that states the Father was "transferred" from the Cottage.

LC also submitted 34 photos in and around the Cottage after the Parents moved into the Cottage, some of which were identified by the Landlord as follows:

1. the Father sitting in front of a piano that was located on the main floor beside the stairway leading to the upper floor;
2. the Mother standing in the kitchen in front of a stove stirring a pot of food;
3. the Father sitting in a chair, located next to a sofa, in the living room;
4. the Mother standing at the back of the Cottage showing a driveway and a cement walkway leading to front of the Cottage;
5. the Mother standing on the cement walkway on side of the Cottage;
6. the Mother standing on the stairway leading to the upper floor demonstrating that she does not need to bend to avoid the overhang from the upper floor above the stairway;
7. the Parents standing together in front of the living room with the piano and stairway to the second floor in the background;

8. the Mother standing inside the bathtub of the bathroom located on the lower floor;
9. the Mother sitting on a sofa in the living room;
10. three pictures of the Parents with family sitting at a table in the dining room having Thanksgiving dinner;
11. the Mother with family in the living room with Christmas tree and gifts; and
12. a double sized medical bed located in the ground floor bedroom.

There were also two photos, one of the Father laying on a chair in the living room and one of him the laying on the medical bed in the lower bedroom, both of which the Landlord stated were taken in the Cottage shortly before the Father's death.

AS stated the rental unit was almost 100 years old and was extremely unsafe. AS stated the Parents were living in the Suite that was newer and more comfortable than the rental unit. AS stated all the windows and doors of the Cottage needed to be replaced. AS stated no repairs had been performed on the Cottage. AS stated the only source of heat in the Cottage was a fireplace and an electric heater.

AS stated the Parents were elderly and disabled. AS stated the Cottage was dangerously unsafe and did not meet accessibility or handicap requirements. AS stated access to the Cottage required walking up a "steep" gravel walkway and then up 7 or 8 natural but uneven stone steps, all of which made access to the Cottage very difficult. AS stated the entry is a concrete patio coming down from a series of crumbling broken concrete stairs. AS stated the windows are original and several of them did not work or function at all. AS stated the bathroom was difficult to negotiate and needed to be renovated. AS stated there are building code violations in the Cottage and that it would be dangerous for the Parents to reside in the Cottage without major renovations. AS stated to there was a level road next to the Suite that provided easy access for the Parents. He stated the Cottage was much smaller than the House. AS stated the Cottage was empty for at least 3 months after the Tenants vacated it but he did not provide any evidence to corroborate this statement. When I asked AS whether the photos submitted by the Landlord were taken in and about the Cottage, he stated the pictures were taken in the Cottage but they appeared to have been taken at some time prior to the Tenants occupying the Cottage.

AS stated the Landlord tried to increase the rent on 2 occasions during COVID. AS submitted photos 13 photos into evidence including the following photos that he identified as follows:

1. gravel roadway near Cottage;
2. five steps made of stone leading to entrance door of the Cottage;
3. cement pathway on side of Cottage;
4. partially open window from inside of Cottage;
5. partially open window from outside of Cottage;
6. person showing their head against overhang above stairway in the Cottage; and
7. looking down the stairway from the upper floor of Cottage

Based on the foregoing testimony and evidence, AS submitted that, as it would be impossible for the Parents to live in the Cottage due to their advanced age and needs, as well as the need for the wood stove to be attended to constantly, it was his opinion the Parents could not have occupied the Cottage. Based on this reasoning, AS submitted the Landlord did not use the Cottage for the purposes stated in the 2 Month Notice and the Tenants were entitled to compensation equal to 12 months of rent.

Analysis

The Tenants seek \$21,000.00 in compensation pursuant to section 51(2) of the Act based on their assertion the Landlord failed to use the rental unit for the stated purpose in the 2 Month Notice. The 2 Month Notice was issued pursuant to section 49(3) of the Act which states:

- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the Act sets out compensation due to tenants served with a notice to end tenancy issued under sections 49(2) and 49(3) of the Act and states in part:

- 51(2) Subject to subsection (3), the landlord...must pay the tenant...an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement *if the landlord...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.

- (3) The director may excuse the landlord...from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord...from
- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
 - (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[emphasis in italics added]

Pursuant to rule 6.6 of the Rules, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the standard of proof. In these circumstances, subsection 51(2) of the Act requires the Landlord establish the Cottage has been used by a parent of the Landlord for at least 6 months' duration, beginning within a reasonable period after the effective date of the 2 Month Notice. The effective date of the 2 Month Notice was June 30, 2021. AS stated the Tenants moved out of the rental unit on June 29 or 30, 2021.

LC and the Landlord submitted 34 pictures of the Parents in and about the Cottage. The pictures show the living room, dining room and bedroom were fully furnished. There were photos of the Father, Mother and/or family taken individually or in groups, at Thanksgiving and later with a Christmas tree and gifts. One of the photos submitted by the Landlord showed the Mother behind the Cottage demonstrating the slope of the gravel road was not an impediment to access to the Cottage. Another photo showed the Mother standing on the cement walkway along the side of the house demonstrating that it was unnecessary to ascend the stone steps at the front of the Cottage to access the entrance door. Although the cement patio and walkway to the side of the house are cracked and somewhat uneven, I do not find them to be an impediment to access to the Cottage by an elderly person walking carefully along them. Another photo showed the Mother standing half-way up the stairway to the upper floor to demonstrate that she would not hit the overhang above stairway.

The Tenant submitted a photo of the stairway inside the Cottage. When I first compared this photo with the photo provided by the Landlord showing the Mother standing beneath the overhang above the stairway, I thought they were different stairways. It wasn't until I realized that the proportions of the photo provided by AS were severely distorted. After careful analysis, could see the same grain of a wooden plank running on the side of the stairway was identical in both pictures. I found this to be misleading and I am surprised that AS did not draw the distortion of the photo he submitted to my attention at the hearing. I also noticed that the photo submitted by the Landlord of the Mother standing on the gravel roadway along the side of the Cottage had a modest slope compared to the photo submitted by the Tenant that appeared to show a much steeper slope.

When assessing his testimony during the hearing, I found the demeanour of AS be confrontational, and his testimony to be evasive and, at times, misleading. In particular, AS' implicit assertion that the Landlord had furnished the Cottage and staged Thanksgiving dinner and pre-Christmas gatherings for photographic purposes was very improbable. In addition, the photo of the Father laying on the chair and one on the medical bed clearly showed the Father in the final days of his life. Again, it would be very improbable for the Landlord to move the Father from the Suite into the Cottage in his final days of life in order to take photos of him in an attempt to dissuade the Tenants from seeking compensation. As such, I give little weight to the credibility or reliability of the evidence and submissions of AS. On the other hand, the Landlord, who had the burden of proof, provided compelling evidence the Parents moved into and occupied the Cottage, commencing shortly after the Tenants vacated the rental unit at the end of June 2021 until the Father's death on December 6, 2021 and, thereafter, the mother continued to occupy the Cottage.

The Tenant stated the Landlords attempted to raise the rent on several occasions. LC confirmed the Landlord had sent rent increases to the Tenants but they were cancelled due to moratoriums on rent increases imposed by the provincial government during the COVID-19 pandemic. I do not see any relevance of these attempted rent increases by the Landlord, that were cancelled due to orders of the provincial government, to the issue of whether the Cottage was used for the purpose stated in the 2 Month Notice.

I find the Parents moved into the Cottage within a reasonable period after the Tenants vacated the rental unit and one or both Parents have resided in the rental unit for over six months. As such, I find the Landlord has satisfied the burden of proving, on a balance of probabilities, that the rental unit was used for the purpose stated in the 2 Month Notice as required by section 51(2)(b) of the Act. Based on the above, I dismiss the Tenant's application seeking the equivalent of 12 times the monthly rent which is \$21,000.00

As the Tenants have been unsuccessful in their application, I dismiss their claim for reimbursement of their filing fee for their application.

Conclusion

The Tenants' application is dismissed.

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: April 13, 2022

Residential Tenancy Branch