



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, the landlord and her agent.

Neither party raised any significant issues with the service of hearing documents and/or evidence. Both parties were prepared to proceed with the hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for the landlord failing to use the rental unit for the stated purpose on a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on October 31, 2017, for a monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00 paid. The parties also agreed the tenancy ended when the tenant vacated the rental unit by September 30, 2020.

The parties disagree on how the tenancy ended. The tenant submits that she received a Two Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on August 28, 2020, with an effective vacancy date of October 31, 2020, citing that a close family member would be occupying the rental unit. The tenant provided a copy of page 1 of 4 of the Notice to End Tenancy, as evidence.

The landlord submits that the tenancy ended by mutual agreement. The landlord submits that when they attended the property to discuss ending the tenancy, they had

completed two forms; a Two Month Notice and a Mutual Agreement to End Tenancy. They stated their intention was that if the tenant signed the Mutual Agreement, they would not have to issue the Two Month Notice.

The landlord submits that while the tenant signed the Mutual Agreement to End Tenancy, they also left the Two Month Notice with the tenant. While the tenant recalls signing something she does not recall if it was a Mutual Agreement to End Tenancy.

The landlord's agent provided a written statement and testimony that he was present when they gave the tenant the option of either signing the Mutual Agreement or the issuance of the Two Month Notice. They submit that they offered for the tenant to take some time to think about the request but that she chose to sign the Mutual Agreement immediately and in their presence.

Neither party provided a signed copy of a Mutual Agreement to End Tenancy.

The landlord provided that their daughter had been living out of province until April 2020, at which point she moved into the family home on the property. The landlord submits that the reason they sought to end the tenancy was that their daughter and her boyfriend, who had been staying in the family home, needed more space and they moved into the rental unit.

The landlord acknowledges that during this time their daughter was training for international skiing competitions and did attend various training activities and events that required her to be away from the property. Specifically, the landlord submits their daughter was away for the following periods:

- October 1 to October 23, 2020
- January 17 to February 1, 2021
- March 15 to March 21, 2021, and
- April 6 to April 22

The landlord stated their daughter moved into the rental unit on October 23, 2020, and that after their daughter and her boyfriend broke up she moved out of the rental unit at the end of May, 2021 and the landlord re-rented the unit to a new tenant effective June 1, 2021.

The tenant submits that after she moved out of the rental unit she moved into a room at her parent's home and as she was still in the area, she drove by the residential property on a regular basis. She stated that as it was winter the unit was visible from the road. She stated that the unit appeared unoccupied; that there was never a vehicle parked at the unit; that there was never anyone there and that there was no activity or sign that anyone lived in the rental unit.

In support of her position the tenant provided a number of social media posts from the landlord's daughter showing that she was at the locations during the times identified by the landlord after the tenancy ended. In addition, she provided local news articles confirmed the daughter's involvement in these various events.

The tenant also submits, in reference to the landlord's document entitled "Timeline of Events", the landlord failed to point out on that timeline that their daughter moved into the unit at all.

Analysis

Section 44 of the *Act* allows for a number of ways in which a tenancy may end. One way is that the landlord and tenant agree in writing to end the tenancy. A second way is for the landlord to issue a Two Month Notice to End Tenancy for Landlord's Use of Property, under Section 49 of the *Act*.

While the landlord submits that the tenant signed a Mutual Agreement to End Tenancy and the tenant acknowledges that they signed something the day she received the landlord's Notice to End Tenancy, there is no documentary evidence provided by either party to confirm that a Mutual Agreement to End Tenancy was signed.

In addition, I find it is unclear, if the tenant had signed a Mutual Agreement to End Tenancy, why the landlord would still have provided the Two Month Notice to End Tenancy.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the landlord has failed to provide any evidence at all that a Mutual Agreement to End Tenancy was signed by the tenant.

As a result, I find the tenancy ended in accordance with the Two Month Notice to End Tenancy for Landlord's Use, issued by the landlord on August 28, 2020.

Section 51 of the *Act* states a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. A tenant may withhold the amount authorized from the last month's rent and that amount is deemed to have been paid to the landlord.

In addition, 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 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.

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 if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, 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.

Residential Tenancy Policy Guideline 2A Section E stipulates:

A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy,
- or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

I am satisfied, from the landlord's documentary and testimonial evidence, that the landlord has established that the rental unit was occupied by the landlord's daughter. I find the landlord's evidence was consistent with their documentary support.

While the tenant raised issues relating to the daughter's absences from the rental property, I find there is nothing in the *Act* or policy guidelines that requires a close family member who occupies the rental unit after a Two Month Notice has become effective to never leave the property for at least 6 months. It is reasonable for anyone, who may be required, because of the work that they do, to be absent from their home for different periods of time.

I am satisfied that the landlord's evidence establishes that each of the absences were for reasonably short duration and consistent with training and/or competition events. I also note that the Two Month Notice specified an effective vacancy date of October 31, 2020. As such, I find it is reasonable that the daughter would not have moved into the rental unit until after the training event from October 1 to October 23, 2020, as per the landlord's testimony.

The *Act* only requires the landlord to use the rental unit, for the stated purpose, for a period of at least six months. In the case before me, I accept that the landlord re-rented the unit effective June 1, 2021 which is seven months after the effective date of the Two Month Notice.

As a result, I am satisfied that the landlord's close family has, within a reasonable time of the effective date of the Two Month Notice to End Tenancy for Landlord's Use of Property, and for a period of at least 6 months occupied the rental unit.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution, 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: April 14, 2022

Residential Tenancy Branch