



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 as a result of the Tenant's Application for Dispute Resolution, made on March 23, 2022. The Tenant applied for compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing and was represented by HH, legal counsel. The Tenant and the Landlord provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on April 1, 2022. The Landlord acknowledged receipt. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Landlord submitted in response to the application. The Landlord testified that documentary evidence was served on the Tenant by registered mail on April 11, 2022. A Canada Post registered mail receipt confirming the date and time of purchase and the tracking number was submitted into evidence. The Tenant testified that he recently received notification of a delivery but that the evidence has not been received. Pursuant to sections 88 and 90 of the Act, documents served by registered mail are deemed to be received five days after they are mailed. I find the Landlord's evidence is deemed to have been received by the Tenant on April 16, 2022. The Tenant did not voice any objection to this finding.

No further issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution proceedings.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on September 1, 2019. During the tenancy, the Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property, dated October 29, 2021 (the Two Month Notice). A copy of the Two Month Notice was submitted into evidence.

On or about November 16, 2021, the Tenant provided the Landlord with written notice of his intention to vacate the rental unit on November 30, 2021, in accordance with section 50(1) of the Act. A copy of the Tenant's notice was submitted into evidence.

At all material times, rent of \$1,800.00 per month was due on the first day of each month. A copy of the tenancy agreement was submitted into evidence.

The Tenant claims \$21,600.00 as compensation under section 51(2) of the Act. The Tenant testified the tenancy ended pursuant to the Two Month Notice which was issued on the basis that the rental unit would be occupied by the Landlord's mother and father.

The Tenant testified that the property has sold. In support, the Tenant submitted a copy of a listing document indicating that the rental unit was listed for sale on March 15, 2022. This document describes the unit as follows: “Recently renovated with new paint, vinyl plank flooring and newer appliances!” The Tenant also submitted a listing document indicating that the rental unit sold on March 22, 2022.

The Landlord does not dispute that the rental unit was sold as claimed by the Tenant. Indeed, the Landlord submitted into evidence a copy of a signed Contract of Purchase and Sale (the Contract). The Contract describes an agreement permitting the Landlord’s mother and father to remain in the rental unit “for \$1,000.00 per month plus utilities until June 22, 2022.”

The Landlord testified that he sponsored his parents to live in Canada and that their applications are still being processed. Although they moved into the rental unit on or about January 15, 2022, the process requires them to have a return flight booked. Currently, the Landlord’s parents are booked on a flight to Iran on May 15, 2022. However, the Landlord anticipates that the flight will be cancelled if the application is approved.

The Landlord testified that the original plan was for his parents to move into the rental unit, which is close to the Landlord’s home. However, HH advised that the Landlord recently obtained a higher-paying job and can now afford a house where the Landlord and his parents can live together. As a result, the Landlord decided to sell the rental unit. However, as noted in the Contract, his parents are entitled to occupy the rental unit until June 22, 2022. HH confirmed that this “rent back” period may be extended by agreement.

The Landlord also addressed the reference to renovations in the real estate listing. He testified that the renovations were completed for several reasons. First, he did not realize the full extent of the condition of the walls and the floor in the rental unit until the move-out condition inspection on November 30, 2021. He testified that he was last in the rental unit in mid-September and did not notice the extent of the damage done to the rental unit. However, referring to text messages in evidence, the Tenant stated the Landlord was in the rental unit on or about October 3, 2021, to repair a fridge.

Second, HH advised that the Landlord completed the renovations “spontaneously” because of the additional time afforded him when the Tenant decided to vacate the rental unit early, before the effective date indicated on the Two Month Notice.

Finally, the Landlord completed the renovations because he wanted a nice place for his parents to live.

At the end of the hearing, the Landlord testified that the actions taken since issuing the Two Month Notice have been in good faith and that the sale of the rental unit is not a “ploy”.

At the end of the hearing, HH submitted that the rental unit has been used for the stated purpose, and that the sale of the rental unit does not automatically run afoul of the Act as long as it is used for the stated purpose. The Landlord's parents moved into the rental unit on or about January 15, 2022, and intend to reside there at least until June 22, 2022. HH also advised that the Landlord is able to negotiate for a further “rent back” arrangement.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Policy Guideline #2A provides clarification with regard to the meaning of “good faith”. It means the party has an honest intention with no ulterior motive. Good faith means a party is acting honestly, intends to do what they say they are going to do, and does not intend to defraud or deceive the tenant. The burden of demonstrating good faith rests with the landlord.

Section 51(2) of the Act provides that compensation may be due if the landlord does not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if 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.

In this case, I accept that the Landlord's mother and father moved into the rental unit on or about January 15, 2022. Accordingly, I find that the rental unit was used for the stated purpose within a reasonable time after the effective date of the Two Month Notice. Further, I find that the Contract permits the Landlord's mother and father to occupy the rental unit until June 22, 2022, a period of a little more than five months. As a result, whether the rental unit will be used for the stated purpose for **at least six months' duration** remains unclear. As noted by HH, the Landlord and the purchaser have expressed a willingness to extend this period.

After careful consideration, I find that the sale of the rental unit on March 22, 2022, does not automatically result in compensation for the Tenant. Rather, I am satisfied that the rental unit has been used for the purpose stated in the Two Month Notice but that it remains unclear if the rental unit will be used for the stated purpose for at least six months' duration. Until this is known, I find that the Tenant's application is premature.

Considering the above, I find that the Tenant's request for compensation pursuant to section 51(2) of the Act is dismissed with leave to reapply.

As the Tenant has not been successful, I find that the Tenant's request to recover the filing fee is dismissed without leave to reapply.

Conclusion

The Tenant's request for compensation is dismissed with leave to reapply. The Tenant's request to recover the filing fee 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: April 26, 2022

Residential Tenancy Branch