



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 in response to an application from the tenants pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- a monetary order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both tenants and both landlords attended the hearing. Tenant A.M.B. called into the hearing approximately 7 mins after the hearing had begun. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. A.M.B was not affirmed at the outset of the hearing.

All parties confirmed they were not recording the hearing pursuant to sections 6.11 of the Rules of Procedure.

All parties confirmed receipt of each others evidence and the landlords confirmed receipt of the tenants’ application for dispute resolution. The parties are all found to have been duly served in accordance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and a return of the filing fee?

Background and Evidence

The parties confirmed this tenancy ran from May 1, 2016 to August 1, 2021. Rent was \$1,988.50 and two deposits of \$900.00 and \$970.00 paid at the outset of the tenancy were return to the tenants.

The tenants are seeking a monetary award of \$23,962.00. The tenants argued that they were issued a 2 month notice to end tenancy for landlord’s use (“2-month notice”) in bad faith and vacated the rental unit under false pretenses.

The parties agree that on May 18, 2021 the tenants were issued a 2-month notice. A copy of this notice was entered into evidence. The notice indicates that the landlord or the landlord's spouse intends to occupy the property and that "all 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 tenants argued that while they understood the home would be sold to the named landlords for their occupation, they alleged the landlords' true motivation in the issuance of the 2-month notice was to perform renovations on the rental unit. The tenants offered the following as evidence that the landlords intended to renovate rather than occupy the unit; a mould inspector found a significant water-related issues in the premises, the unit was changed from an "upper and lower" unit to a single unit, a stop work order was issued by the City for lack of permits related to a renovation, and that the tenants had observed very little residential activity at the home when they drove past following their move out.

The landlords did not dispute that they had performed some repairs following their occupation of the rental home. The landlords explained that the unit was "older" and placed its age around 70 years old. The landlords said they updated the kitchen and bathroom, some window coverings and had always intended to remove the "upper and lower" units to combine them into a single home for their occupation. Further the landlords acknowledged some issues with the City related to noise complaints and a stop work order.

The landlords maintained the home was their only residence and explained they have occupied the home throughout the renovations. The landlords provided evidence supporting this occupation from August 14, 2021 to the present day. Their evidence included receipts for items purchased and delivered to the home, a food kit delivery service in their name at the address in question, a declaration of their occupancy to avoid paying an empty homes tax, a sworn affidavit confirming their residence and a U-Haul receipt complete with GPS map evidencing their move.

Analysis

Rule of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts

occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.”

The tenants have applied for a monetary award of \$23,962.00 and must therefore demonstrate their entitlement to an award based on a breach of the *Act*, their tenancy agreement or the Regulations.

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord 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 (except for demolition).

This issue is examined in detail in *Policy Guideline #50*. It states as follows:

Section 51 of the RTA...require a landlord to pay further compensation to a tenant if the landlord does not prove that they have accomplished the purpose for which the tenancy was ended within a reasonable period or, in some instances, have not used the rental unit for the stated purpose for at least 6 months.

It continues by stating:

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

This second point, along with the landlords alleged “bad faith” are where the tenants focused their arguments related to compensation.

After having reviewed the evidence submitted and following a consideration of the parties testimony, I find the tenants have failed to demonstrate that the landlords did not accomplish the stated purpose for ending the tenancy or use the rental unit for the stated purpose for at least 6 months.

The tenants received a 2 month notice to end tenancy indicating that the home had been sold and that the purchasers intended to occupy the rental unit, and that the landlord or the landlord's spouse intends to occupy the property. All evidence provided by the landlords supports that these steps were accomplished. Specifically, the landlords provided numerous receipts showing deliveries to the address, had a GPS map from U-Haul confirming their movements on the day they moved into the property, a 2021 Empty Homes declaration certificate, a sworn affidavit signed November 26, 2021 attesting to their residency at the property in question and various utility bills.

While the tenants made a series of arguments related to the steps taken by the landlords to renovate the home, I find these renovations and repairs are reasonable given the age of the home and stated purpose of its use, that being occupation by the landlord. I find little evidence to support that the landlords were not in occupation of the home. I note there is no 'good faith' provision of the *Act* as it relates to compensation, the 'good faith' provision relates to a dispute of the notice at its time of issuance.

For these reasons, the tenants' application is dismissed without leave to reapply. The tenants must bear the cost of their own filing fee.

Conclusion

The tenants' application is dismissed 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: May 25, 2022

Residential Tenancy Branch