



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This Review Hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for the landlord's failure to use the rental unit for the purpose contained in 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.

The hearing was originally scheduled for February 8, 2022, and a Decision was rendered on February 10, 2022. On April 1, 2022 the landlord was successful in obtaining this Review Hearing on the basis that the landlord did not attend the hearing due to reasons that were not anticipated and were beyond the landlord's control.

One of the tenants and the landlord attended the Review Hearing, and the tenant also represented the other named tenant. The parties each gave affirmed testimony, and were given the opportunity to question each other and to give submissions.

The parties agreed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for compensation related to a notice to end the tenancy for landlord's use of property?

Background and Evidence

The tenant testified that this fixed-term tenancy began on May 1, 2019 and reverted to a month-to-month tenancy after April 30, 2021. Rent in the amount of \$2,550.00 was

payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,275.00, all of which has been returned to the tenants. The rental unit is a single family dwelling and a copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property by regular mail, and a copy has been provided for this hearing. It is dated March 12, 2021 and contains an effective date of vacancy of May 31, 2021. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse. The tenants moved out on May 31, 2021 and received compensation of 1 month of rent.

However, no one moved in and the rental unit was vacant for June or July, 2021 and the landlord listed the home for sale on June 30, 2021. Groceries for the tenants were accidentally delivered to the rental unit after the tenants vacated, and the tenants collected them and mail, but no one was ever at the house regardless of what time the tenants arrived. The tenants contacted a friend who is a property manager and were advised that the home was listed for sale. The tenants have provided a copy of the listing as evidence for this hearing.

The tenants served the landlord with the hearing package for the first hearing at the rental address and again at the primary address of the landlord on the notice to end the tenancy, both by registered mail. The package that had been sent to the rental address was returned to the tenants, but not the package sent to the other address of the landlord.

The tenant further testified that the landlord's evidentiary material states that the landlord moved in on June 2, 2021, and the photographs the landlord has provided are the same ones that were in the MLS listing. Further, utilities were in the tenants' names during the tenancy except for water and garbage/sewer. The utility bill provided in the landlord's evidence is very low cost, and the rental unit was vacant prior to this tenancy. The hydro bill in the landlord's evidence is dated July 22, 2021 in the amount of \$36.42, but that's what it would cost if the home was empty. When the tenants resided in the rental unit hydro was about \$250.00 and gas was about \$150.00 per month; it's a big house.

The rental home sold on December 8, 2021.

The tenant had sent registered mail to the landlord and the landlord didn't attend the February 8, 2022 hearing. After the February 8, 2022 hearing, the tenant sent a text message to the landlord asking if the landlord had received the hearing package, and sent a photograph of the envelope. On March 27, 2022 the tenants had not heard back from the landlord and the tenant sent the landlord a screen shot of the monetary order that was made by the Arbitrator dated February 10, 2022. The landlord called the tenant asking if the tenant is insane, and said that he hadn't received the hearing documents.

The landlord testified that he moved into the property on June 2, 2021 but only lived there for 3 weeks or less. The landlord moved out on June 20, 2021 because after a week of staying at the rental home, the landlord was coughing up blood, and suffered mild shortness of breath. The landlord does not know what caused it, but perhaps it was COVID-19 because the tenants had it when they lived there. During June to December the pandemic situation was severe. The landlord talked to a family doctor on June 22, 2021 and got a prescription for a cough, and a copy of the prescription has been provided for this hearing. The landlord felt it was not safe to stay there, so the landlord moved out.

The landlord also testified that on November 24, 2021 the landlord had an x-ray taken due to chest pain and still coughing up blood, which were long lasting effects. A copy of a radiology report has also been provided dated January 14, 2022 which states that the November 24, 2021 comparison was used, and the heart was normal, lungs were clear and the remainder of the examination is unremarkable. Another radiology report dated January 31, 2022 states that the gallbladder was normal, liver, spleen and pancreas were unremarkable, both kidneys were normal in size, and no abnormality was identified.

The landlord could not get all of the furniture in at once and needed to move in slowly which is why the utilities were so low in comparison to what the tenants had paid. The landlord didn't turn on the furnace during summer. The landlord has also provided a copy of the water bill dated July 30, 2021 and a copy of a hydro bill dated July 22, 2021, showing that the utilities were in the landlord's name. Photographs of the rental home have also been provided, showing furniture and personal belongings.

The landlord didn't receive the first registered mail package that the tenant mentioned in testimony; the landlord isolated himself most of the time in his parent's home and rarely

went outside. The landlord goes there sometimes to collect mail, and didn't receive the hearing package, so didn't anticipate the hearing scheduled for February 8, 2022.

During cross examination, the landlord testified that although the tenants had COVID-19 in February, 2021, the landlord is not certain if it is related to the landlord's illness. Prior to taking possession of the rental unit in June, 2021, the landlord was healthy, but a week after being in the rental home, the landlord's health condition deteriorated, so for safety reasons, the landlord was forced to move out.

After the hearing had concluded, but prior to making this Decision, the landlord filed a Request for Clarification, indicating that he did not wish the Decision clarified, but wanted to clarify the landlord's evidence. I cannot consider additional evidence after a hearing has concluded.

Analysis

The *Residential Tenancy Act* is clear:

(2) 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 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.

(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 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.

In this case, the landlord relies on evidence that the landlord became ill after moving into the rental unit in June, 2021, and perhaps the illness was a result of the tenants having COVID-19 in February, 2021.

I have reviewed all of the evidentiary material, and I am not satisfied that the landlord contracted any illness from the rental home, and I do not accept that the landlord contracted COVID-19 several months after the tenants had the virus. I do not accept that the landlord has established that extenuating circumstances existed that required the landlord to sell the property.

The law states that following a Review Hearing, I may confirm, vary or set aside the original Decision and/or Order. I have reviewed the Decision and Order, and I find that the Decision should be varied to include the evidence of the landlord, and this Decision replaces the Decision made on February 10, 2022. I also find that the tenants have established the claim of 12 times the monthly rent of \$2,550.00, or \$30,600.00 as well as \$100.00 for recovery of the filing fee as against the landlord, and I confirm the monetary order made on February 10, 2022.

Conclusion

For the reasons set out above, the monetary order made on February 10, 2022 is hereby confirmed.

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: June 30, 2022

Residential Tenancy Branch