



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 by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. No issues were raised by either Party in relation to the other Parties’ evidence.

Issue(s) to be Decided

Are the Landlords required to pay the Tenant compensation as set out under the Act?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy of a unit that contains both an upper and lower suite started on May 1, 2016 and ended on May 31, 2021. Rent of \$2,975.40 was payable on the first day of each month. The security and pet deposits have been dealt with. The Landlord gave the Tenants a two month notice to end tenancy for landlord’s use dated March 31, 2021 (the “Notice”). The Notice sets out an effective date of May 31, 2021 and states as its reason that the landlord and their children will occupy the unit. The Landlords did not occupy the unit. The Landlords

rented out the top part of the unit and the Landlord's child moved into the lower part of the unit.

The Landlord states that extenuating circumstances prevented their occupation of the unit. The Landlord states that their home that they were living in prior to the service of the Notice was not sold preventing the Landlord from moving into the unit. The Landlord states that their home was listed in February 2021 and was taken off the market on July 15, 2021. The Landlord states that although they lowered the asking price during the listing their home did not sell because the price was too high and because COVID reduced the viewing of the unit. The Landlord states that they had virtual showings of the unit. The Landlord states that the unit required big repairs that were significant and extensive. The Landlord states that they were going to offer the Tenants the upper suite after the renovations were done but that they knew the space would not be large enough for the Tenants. The Landlord states that they did use the garages at the unit for storage.

The Tenant states that the Landlords informed the Tenant the day before they gave the Tenant the Notice that their home had been sold. The Tenant provides a copy of a text to the Landlord telling the Landlord that they were happy that their home sold. The Tenant claims compensation of the equivalent of 12 month's rent.

Analysis

Section 51(2) of the Act provides that 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.

Use of a unit for storage is not use for occupancy. Based on the undisputed evidence that the Landlords never occupied the entire unit I find that the Landlord must now pay the Tenant the equivalent of 12 times the monthly rent of \$2,975.40 in the total amount of \$35,704.80.

Section 51(3) of the Act provides that 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.

The Landlord did not end the tenancy for extensive renovations, and I find that this evidence cannot therefore be an extenuating reason for the Landlords not occupying the unit. There is no evidence that the Landlords were not aware of the COVID restrictions both before and during the listing of their home. The Landlord's evidence is that they used virtual showings and I take this to indicate that this was done because of COVID restrictions. The Landlords would have reasonably expected a reduced showing in these circumstances. The Landlord's evidence of not selling their home is based on their not obtaining the asking price. This indicates that the Landlord chose to remove the listing based on optimizing their financial situation. As this was a choice made by the Landlord, I find that the Landlord's have not substantiated that extenuating circumstances prevented the Landlords from occupying the unit. The Landlords are therefore not excused from paying the compensation to the Tenants.

As the Tenants' application has been successful, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$35,804.80**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$35,804.80**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 14, 2022

Residential Tenancy Branch