



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 an Application for Dispute Resolution by the tenant filed under the *Residential Tenancy Act* (the “Act”) for compensation because the landlord ended the tenancy and has not complied with the Act, or used the rental unit for the stated purpose, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. Only evidence presented by the party who submitted it will be considered, in accordance with the Residential Tenancy Branch Rules of Procedure 7.4.

Issue to be Decided

Is the tenant entitled to compensation under section 51(2) of the Act?

Background and Evidence

The tenancy began on May 1, 2017. Rent in the amount of \$600.00 was payable on the first of each month. A security deposit of \$300.00 was paid by the tenant.

The tenant testified that they moved out of the rental unit on January 31, 2020, after receiving a Two Month Notice to End Tenancy for Landlord’s Use of Property, (the “Notice”) dated November 4, 2019, from the Landlord. The tenant filed in evidence a copy of the Notice.

The reason for ending the tenancy within the Notice is:

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).

The landlord testified that their relationship with their spouse was very unstable and that they had been using the designated office space to go to with their two children as they needed a quiet space to be able to go to. The landlord stated that this was not ideal because the office has no window, bathroom and no place to sleep if needed.

The landlord testified that that because the office was not suitable to have the children in and were concerned about becoming a single parent, they decided to issue the Notice.

The landlord stated that they had to go back to the family farm at night with the children because they had chores to do. However, they did not want to be there during the day and needed their own safe space.

The landlord testified that they did use the rental unit from February 1, 2020, to July 2020; however, after the pandemic became more concerning they decided it would not be in the best interest of the children to be at the building and after working on their personal relationship they felt they no longer required to continue using the premises and they rented the rental unit for August 2020, which was after the six-month period.

The tenant testified that they were told by a previous employee of the landlord that a year prior to issuing the Notice that the landlord had asked the employee if they wanted to live in their rental unit because they could legally evict them. Filed in evidence are text messages between the tenant and previous employee.

The tenant testified that the previous employee was let go from their employment because they would not sign a nondisclosure agreement.

The landlord testified that they had no such a conversation with their previous employee about evicting the tenant. The landlord stated at that time the employee wanted to move to a quiet rental unit. The landlord stated that they only asked their employee if they would sign an affidavit stating the use of the rental unit. The landlord stated that their employment did not end for this reason.

Analysis

Section 51 (2) of the Act provides:

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

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

*(b) **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.*** **[my emphasis]**

(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 the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit 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 #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property. The Guideline provides that a landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least six months.

In this case, the landlord and their spouse were having issues within their relationship and due to this the landlord did not want to be at the family farm during the day. I cannot find that to be unreasonable. The evidence of the landlord was that they would use the rental unit for their own purpose to be in a stress-free environment with their children. The evidence of the landlord was that they were originally using a small office space;

however, that was not suitable because it had no windows or a bathroom for them to use. I find that reasonable as it would not be suitable for any person if they had no windows or bathroom and were spending the days there.

The tenant did not dispute or question the above facts.

The only testimony and evidence presented by the tenant in response to the landlord was a text message between the tenant and a former employee of the landlord. That a conversation about offering the rental unit to the employee was said to have taken place a year prior to the tenancy ending. This was denied by the landlord. I find this not to be relevant as this was not why the tenancy ended and was a year prior to the Notice being served.

Further, I can put no weight on the text message as this simply could be retaliative as the text message first indicated this person was not willing to support either the landlord or the tenant, and it was only after they were let go from their employment that they were now willing to share this information.

Based on the above, I accept the evidence of the landlord that they were occupying the rental unit for their own purpose for the six-month period. Therefore, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application 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: July 29, 2022

Residential Tenancy Branch