



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 the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the "Act") for a monetary award for damages and loss and to recover their filing fees pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The monthly rent for this periodic tenancy was \$2,150.00. The rental unit is a suite in a multi-unit high-rise building managed by a strata corporation. The named landlords purchased the rental property from the previous owner. The previous owner issued a 2 Month Notice to End Tenancy for Landlord's Use dated October 18, 2019 with an effective date of December 31, 2019, at the landlords' request. The reason provided on the 2 Month Notice for the tenancy to end is that the rental unit will be occupied by the landlords or their close family member. The tenancy ended and the tenant vacated the rental unit in accordance with the 2 Month Notice on December 31, 2019.

The landlords submit that the sale of the property completed in January 2020 and they began residing in the rental unit in March 2020. The landlords submitted into documentary evidence utility bills for the rental unit, correspondence with neighbors and the strata management company for the building and various photographs and materials in support of their position that they have been residing in the rental unit since March 2020.

The tenant did not dispute the landlords' submission at the hearing but said they had been told by neighbors and building managers that they were not aware of the rental unit having been occupied. The tenant also submitted a photograph of the exterior of the suite and suggest it does not appear to be occupied. The tenant submits they believe the suite was unoccupied until August 2020.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* states that a landlord must pay the tenant an amount that is equivalent to 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,

The 2 Month Notice dated October 18, 2019 indicates that the rental unit will be occupied by the landlords or their close family member.

The landlords submit that they have been occupying the rental unit since March 2020. I find there is a preponderance of evidence to support the landlords' submission. I find their testimony and submissions to be cogent, consistent and reasonable. I find their explanation that they undertook some minor repairs and renovations in the weeks prior to occupying the suite to have an air of reality and be consistent with how a reasonable person would behave under similar circumstances. I find the electrical utility bills for the rental unit to show usage consistent with an occupied suite from March 2020 onwards. The landlords have also submitted receipts from grocery delivery services showing that the rental unit address is the delivery address for large amounts of produce and foodstuffs.

I find the evidence of the tenant to be insufficient to refute the preponderance of evidence provided by the landlords. I find that some hearsay evidence of conversations with other parties and indistinct photographs to be insufficient to find that the suite was unoccupied for the period the tenant alleges.

Based on the totality of the evidence I am satisfied that the landlords occupied the rental unit from March 2020 onwards. I find that taking possession of the suite in March, 2020 after a tenancy ends on December 31, 2019 to be a reasonable timeframe. I further accept the undisputed evidence of the parties that the landlords continue to reside in the rental unit as their primary and sole residence. Accordingly, I find that the landlord has accomplished the stated purpose for ending the tenancy within a reasonable timeframe and have continued to use the rental unit for that purpose for at least 6 months.

I find no basis for a monetary award in the tenant's favour as the landlord has met their obligations under the Act and there is no breach from which a monetary award would arise. I therefore dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's 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: July 28, 2022

Residential Tenancy Branch