



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.

Issue to be Decided

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

Background and Evidence

The tenancy began on November 15, 2017. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of 450.00 was paid by the tenant.

The tenant testified that he moved out of the rental unit on September 25, 2017, after receiving a Two Month Notice to End Tenancy for Landlord’s Use of Property, (the “Notice”) dated July 22, 2021, 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's agent testified that the family home before the Notice was issued consists of the landlords, their parents and their two teenage boy who shared a room.

The landlord's agent testified that because the landlord's parent were starting to have difficulties on the stairs and that the two boys wanted their own room that they issued the Notice.

The landlord's agent testified that the landlord's parents moved into the rental unit within three weeks of the tenancy ended and have been residing there ever since the Notice was issued.

The tenant testified that the landlord's husband in May 2021 asked to increase the rent by \$150.00, in two months. The tenant stated that later they the landlord stated that they did not want a rent increase and was informed since their children were growing up and they boys did were no longer comfortable sleeping together and two days later they were served with the Notice.

The tenant testified that in November 2021 that they found the rental unit was advertised from rent. The tenant stated they are not satisfied with the landlord's photographs showing the parents living in the basement as they simply could be staged.

The landlord's agent testified that they did advertise the rental unit; however, it was not for the purpose of renting at that time and it was never rented to a new tenant. The agent stated that the landlord was testing for the market rent and wanted this information to financially plan as the landlord's parents had wanted to go back to their own country for a period of time in the future; however, due to health concerns that was not possible.

The landlord's agent testified that the photographs were recently taken which was simply to show that the landlord's are still using the premises for their own purpose.

The landlord's agent testified that the issue of rent has been discussed over the years; however, the landlord never increased the rent. The agent stated that the family simply needed space as an extension of their home for their own family.

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 household consisted for 4 adults and two teenage boys who were sharing a room. I find it reasonable that the teenage boys would no longer be wanting to share a room and the adult parents of the landlords would move from the upper portion of the family home into the lower unit as an extension of their home.

While I accept posting an advertisement for rent is suspicious; however, that alone does not necessary support that the premises was re-rented to a new tenant. The landlord provided an explanation as to why they posted the advertisement and confirmed it was never rented.

The landlord has provided photographs of the rental unit showing that it is fully furnished with their parent's belongings, and photographs of the family using the space. I cannot find based on the photographs that this was stage as this does not appear to be the case.

Further, the photographs support that the rental unit has not been re-rent and is still being used by the landlord's parents. Therefore, I dismiss the tenant's application for compensation under the Act.

As the tenant was not successful with their application, I find the tenant is not entitled to recover the cost of the filing fee.

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: August 03, 2022

Residential Tenancy Branch