



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 the *Residential Tenancy Act* (the "*Act*") for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

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

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

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover their filing fee from the landlord?

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. This periodic tenancy began on April 1, 2016. Monthly rent at the end of the tenancy was \$2,562.50 payable on the first of each month. The rental unit is a single detached house. The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated January 31, 2022 with an effective date of March 31, 2022. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord or their spouse.

The tenancy ended with the tenants vacating the rental unit on the effective date of the notice, March 31, 2022. The tenants submit that the landlord did not occupy the rental unit within a reasonable amount of time and the rental unit remained vacant thereafter. The tenants filed their present application for dispute resolution on May 6, 2022. The tenants testified that they believe the landlord began occupying the rental unit after they were served with the notice of hearing sometime in late-June 2022.

The landlord submits that they began occupying the rental unit on April 5, 2022. The landlord gave lengthy testimony about renovating and selling their previous house, purchasing boxes at a Home Depot to pack their personal items and their intention to eventually redevelop the rental property. The landlord spoke at great length about their plan for redevelopment, their frustration with neighbors who dislike them, the permit process with the municipality and their conflict with the tenants.

The landlord submitted multiple documents showing their listing of their previous residence and ongoing plans for development of the rental unit. The landlord also provided a letter from an acquaintance who said they had visited the landlord at the rental unit since April 15, 2022. The landlord said they could contact multiple witnesses to testify that they were residing in the rental unit but did not call any witnesses during the hearing.

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, or the purchaser of a property, must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if a tenant receives a notice to end tenancy for landlord's use of property and:

- (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 onus lies with the landlord to establish on a balance of probabilities that the rental unit has been used for the stated purpose for the requisite time within a reasonable period.

In the present case the parties agree that the landlord is now residing in the rental unit as they indicated on the 2 Month Notice. The parties disagree on when the occupation began. The tenants submit that the landlord moved in at the end of June 2022 while the landlord says they began residing on April 5, 2022.

Much of the landlord's evidence pertains to matters I find irrelevant to the matter at hand including their previous communications with the tenants, future plans for development of the rental unit, and complaints about the tenants' conduct. I find that the photographs of boxes and personal items are of little assistance in determining when the landlord moved into the rental unit. While the receipt shows boxes were purchased in early April I do not find this to be sufficient to show the landlord packed their belongings and moved at that time.

I find the evidence of the listing for sale of the landlord's other property to have some probative value in supporting their claim that they are no longer residing at that address. I note that the listing contract commences in June 2022, the time that the tenants suggest the landlord first moved into the rental unit.

Taken in its entirety, I find insufficient evidence to support the landlord's claim that they moved into the rental unit in early April. I find little independent documentary evidence to show the landlord began occupying the unit at that time. I find the submission of the landlord and a letter from a personal acquaintance to have little persuasive value. If the landlord was residing at the rental address as claimed it would be reasonable to expect some documentary evidence by way of utility bills, correspondence, or government issued identification clearly showing the address. Furthermore, I accept the tenant's evidence that the utility usage for the rental unit is inconsistent with a home that is occupied.

The landlord gave testimony that they vacated their previous home in order to have renovations prior to listing that property for sale. If this were true it would be reasonable to have some documentary evidence by way of invoices from contractors or some receipts from home furnishing stores for materials or supplies. The landlord failed to provide any such documentary evidence.

I find the landlord's evidence and submissions to be focused on future plans for development of the property which has little relevance to the matter at hand.

The landlord was given a full opportunity to make submissions and call witnesses. While the landlord claimed at several points that they had multiple individual witnesses available to attest that they have observed the landlord residing in the rental unit since April 2022, they did not call any witnesses. Pursuant to Residential Tenancy Rule of Procedure 7.19 parties are responsible for having their witnesses available to attend a dispute resolution hearing and it is up to them to present their evidence and submissions. Witnesses were not excluded and the landlord was given ample opportunity to call their witnesses but failed to do so.

Based on the totality of the evidence I find the landlord has not met their evidentiary onus to establish on a balance of probabilities that they began residing in the rental unit, as they claimed in the 2 Month Notice of January 31, 2022, on April 5, 2022.

I accept the evidence that the landlord has been residing in the rental unit since late-June 2022.

The Act provides that a landlord must take steps to accomplish their stated purpose within a reasonable time. Policy Guideline 51 provides that:

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances.

...

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Under the circumstances I find that a period of over eight weeks to be an unreasonable length of time for a landlord to move into the rental unit. The notice was issued on January 31, 2022 and the tenants did not dispute or overhold the rental unit beyond the effective date of the notice. No evidence was given that the rental unit required any excessive cleaning, repairs or renovations prior to the landlord occupying the suite. I find that a reasonable timeframe would have been a matter of days, up to about 15 days as provided in the Guideline.

As noted above I find the landlord has provided insufficient evidence to establish, on a balance of probabilities, that they began occupying the rental unit on April 5, 2022 as claimed. I accept the evidence that the landlord occupied the rental unit in June 2022, after the tenants had filed their present application for dispute resolution and served it on the landlord. I find the timeframe to be unreasonable and find that the landlord did not take steps within a reasonable time to accomplish their stated purpose for ending the tenancy.

Accordingly, I issue a monetary award in the tenants' favour in the amount of \$30,750.00, 12 times the monthly rent of \$2,562.50 payable under the tenancy agreement.

As the tenants were successful in their application they are entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$30,850.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: October 24, 2022

Residential Tenancy Branch