



Dispute Resolution Services

Page: 1

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 an 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 fixed-term tenancy began on December 15, 2020 for a term of 1-year. Monthly rent during the tenancy was \$2,250.00 payable on the 15th of each month. The rental unit is a 1-bedroom, 1-bathroom condo unit of approximately 675 square feet in a strata-managed high-rise building.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated November 12, 2021 with an effective date of January 14, 2022. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord or the landlord's spouse.

The tenants gave notice pursuant to section 50 of the Act and the tenancy ended on December 10, 2021. The parties agree that the security deposit for this tenancy has been dealt with in accordance with the Act. The tenants were provided the equivalent of one month's rent pursuant to section 51(1) of the Act.

The tenants submit that it is not the landlord who resides in the rental unit but their sibling. The tenants say that the rental unit has not been used for the purposes set out in the notice and seek compensation in an amount equivalent to 12 months rent pursuant to section 51(2).

The tenants submitted into evidence correspondence with the building manager confirming that the landlord's sibling resides in the suite. The tenants also testified that when serving the landlord with the present application they did not encounter them at the rental unit address and the intercom system does not list the landlord but only their sibling.

The landlord testified that they moved into the rental unit in late December 2021 with their sibling moving into the suite in March 2022. The landlord says they reside together in the rental unit. The landlord submitted into evidence copies of utility bills for the rental unit under their name, government issued identification with the rental unit as their mailing address, copies of insurance documents for the suite with both siblings named as policy holders and the Form K provided to the strata corporation listing both siblings as occupants.

The landlord testified that they share the rental unit with their sibling with the landlord using the bedroom and the sibling sleeping on a mattress in the den area. The landlord explained that prior to moving into the rental unit, both they and their sibling were traveling overseas and had no other address in the province. The landlord testified that they founded and operate a business with their sibling and the proximity and limited space is not an issue.

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, based on the preponderance of evidence I am satisfied that the landlord resides in the rental unit as stated on the 2 Month Notice of November 12, 2021.

The landlord provided cogent, consistent testimony supported in their documentary evidence including the utility bills from third party companies and valid government issued identification. I am satisfied that the landlord occupies the rental unit and uses it for ordinary residential purposes. I find that the landlord sharing the unit with their sibling does not contradict that they are occupying the rental unit.

The landlord has addressed questions posed including how they are using the space in the rental unit, their previous residence and the reason they moved to the municipality. I find the landlord's explanation to be reasonable and consistent with how an ordinary individual would behave under the circumstances. I find the landlord's choice to return to the municipality where they own and operate a business to be reasonable. I find the landlord's explanation that they share living accommodations with their sibling with whom they also work to be reasonable and reflective of their amicable relationship.

I do not find the evidence of the tenants contradicts the landlord's position that they reside in the rental unit. The correspondence from the building manager confirms that the landlord's sibling resides in the rental unit but does not refute that the landlord also resides there. I find the display on an intercom system to be of limited probative value as in many cases numbers may not be listed, not updated or provide the name of just one occupant.

While I have no reason to doubt the tenants' evidence regarding their difficulties and inconvenience faced due to the end of the tenancy, I find these complaints are of no relevance to the matter at hand. The Act simply provides that a tenant is entitled to compensation if the landlord does not carry out the reasons stated on the notice. There is no consideration of losses incurred on the part of the tenants when making a determination of whether the landlord has accomplished the purposes on the notice.

Based on the totality of the evidence I am satisfied that the landlord has met their evidentiary onus to establish, on a balance of probabilities, that they are residing in the rental unit and using the space for ordinary residential purposes as set out on the 2 Month Notice. Accordingly, I dismiss the tenants' application.

Conclusion

The tenants' 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: October 31, 2022

Residential Tenancy Branch