



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other’s evidence. The Parties confirmed that no recording devices were being used by them.

Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the Respondent purchased the unit and asked the landlord in writing to give the Tenants a notice to end tenancy dated August 12, 2021 for the purchaser to occupy the unit (the “Notice”). The Notice is dated August 12, 2021 with an effective date of October 31, 2021. The Tenants were paying monthly rent of \$2,700.00.

The Respondent states that they moved into the unit on November 3, 2021 and have been residing in the unit since that time.

The Tenants state that the unit was listed for sale in March 2021 indicating that the Respondent did not have the good faith intention to occupy the unit. The Respondent submits that the unit was listed due to financial hardship but that the unit was never sold. The Tenants confirm that they have no evidence that the Respondent did not move into the unit, that the unit was sold or that the Respondent has not occupied the unit to date.

Analysis

Section 51(2) of the Act provides that 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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 51(3) of the Act provides that 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 applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

There is no evidence that the Respondent did not occupy the unit. There is no evidence that the Respondent moved out of the unit before 6 months of occupancy was achieved. There is no evidence that the Respondent sold the unit. The Respondent's evidence is that they continue to occupy the unit to date. While the Respondent may have placed the unit up for sale after a few months of occupancy, this is not evidence that the Respondent did not occupy the unit as required under the Act.

For these reasons I find that the Tenants have not substantiated the compensation claimed. Accepting that the Landlord occupied the unit as required under the Act there is no need to consider whether any extenuating circumstances existed to stop the Respondent from occupying the unit.

As the Tenants' claim has not been successful, I dismiss the claim for recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 2, 2022

Residential Tenancy Branch