



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on March 26, 2022. The Tenants applied for compensation from the Landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 6, 2020 (the Two Month Notice) and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

The Tenants and the individual Landlords attended the hearing. The corporate Landlord was represented at the hearing by SS and NE, agents. All those giving testimony provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered email on April 2, 2022. The Landlords acknowledged receipt of these documents. In addition, the Landlords testified the documents they intended to rely on were served on the Tenants by registered mail. The Tenants acknowledged receipt on or about November 10, 2022.

No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to compensation from the Landlords related to the Two Month Notice?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on August 15, 2017 and ended on December 15, 2020. At the end of the tenancy, rent of \$1,018.00 per month was due on the fifteenth day of each month. The Tenant paid a security deposit of \$475.00, which the Landlords returned to the Tenants. A copy of the signed tenancy agreement was submitted into evidence.

On behalf of the Tenants, CP confirmed that they received the Two Month Notice on or about October 10, 2020. The Two Month Notice included an effective date of December 31, 2020, but the parties agreed the Tenants moved out on December 15, 2020.

The Two Month Notice was issued on the basis that the unit would be occupied by the individual Landlords. On behalf of the Tenants, MM testified to the Tenants' belief that the Landlords did not occupy the rental unit. Accordingly, the Tenants seek compensation of \$12,216.00 ($\$1,018.00 \times 12$) pursuant to section 51(2) of the Act.

MM testified that he drove past the rental property twice per day, 3 or 4 days each week, but that he never saw any lights on at the property. MM also testified that a friend, LI, went to look at the rental unit on or about June 14, 2021, and that no one appeared to be living there. An email from LI to the Tenants dated June 14, 2021 was submitted into evidence. LI did not attend the hearing to provide testimony.

MM also referred to evidence of BC Hydro consumption rates. MM referred to a copy of an invoice submitted with the Landlords' evidence and asserted that consumption was very low for the period from December 16, 2020 to January 4, 2022. MM also testified that the evidence of consumption for the period the Landlords claim to have been living in the rental property indicates that the Landlords' consumption was roughly half that of the Tenants for the previous year.

MM also testified that CP's father, BP, attended the rental property on August 11, 2021, and was advised by the occupant that she had lived at the rental property for about 1-1/2 months. A hand-written note from BP to the Tenants dated August 13, 2021 was submitted into evidence. BP did not attend the hearing to provide testimony.

In reply, SS testified that she completed the move-out condition inspection with the Tenants on December 15, 2020, and observed the Landlords move into the property on December 16, 2020. SS testified that she gave the keys to the individual Landlords on that date. In addition, SS testified that she was contacted by the individual Landlords in June 2021 with respect to renting the property as of July 2021. JH had received an email advising that he was expected to return to work in the office in July 2021. A copy of the email to JH dated June 16, 2022 was submitted into evidence.

SS also testified that the rental unit has a wood stove and that in her experience as a property manager, no two tenants use the same amount of utilities.

In addition, ZC testified with respect to activities the individual Landlords undertook while they lived at the rental property, including buying hardwood flooring from Costco in January 2021, getting a tree service in February 2021, and Telus service in March 2021.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In this case, the Two Month Notice was issued on the basis that the Landlord or the Landlord's spouse would occupy the rental unit.

Section 51(2) of the Act provides that compensation may be due if the landlord does not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if 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.

In this case, for the reasons that follow, I find it is more likely than not that the Landlords occupied the rental unit from December 16, 2020 to June 30, 2021, a period of six-and-a-half months. I accept the affirmed testimony of SS who advised that she observed the individual Landlords move into the rental unit on December 16, 2020, and was contacted in June 2021 when the individual Landlords informed her of their intention to move out of the rental unit due to work obligations.

With respect to the Tenants' evidence concerning BC Hydro consumption, I find the conclusions drawn by the Tenants are speculative. Rather, I prefer the evidence of SS who testified that, based on her experience, different tenants use utilities differently.

With respect to the correspondence from LI and BP, I find I am not persuaded that the individual Landlords did not occupy the rental unit as claimed. I place little weight on this evidence as LI and BP did not attend the hearing to provide affirmed testimony.

I also accept the testimony of ZC who provided a description of various activities performed by the Landlords while they occupied the rental unit.

Considering the above, I find the Tenants' application is dismissed without leave to reapply.

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: November 23, 2022

Residential Tenancy Branch