



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, RPP, FFT**

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the *Residential Tenancy Act* (the “Act”) for compensation because the landlord ended the tenancy and has not complied with the Act or use of the rental unit for the stated purpose, for the return of their personal property, 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.

Preliminary Issues

In this case, the landlord’s property manager was instructed by the landlord to issue the Two Month Notice for Landlord’s Use of Property, (the “Notice”) issued on September 29, 2022, because the landlord’s child was going to occupy the rental. Therefore, I find the landlord’s property manager, and owner of that company are not responsible for the landlord’s action. Therefore, I have removed the property manager and the owner of the company from the style of cause.

I have also corrected the style of cause to show the correct name of the owner of the property, the landlord.

At the outset of the hearing the landlord and landlord’s agent confirmed they have no personal property to return. As the tenancy ended on November 30, 2021, and the tenant’s application was filed on March 15, 2022, I find the landlord was not required to

retain any belongings after 90 days. As the landlord does not have any belongings of the tenant, I find I cannot make any order against the landlord..

Issue to be Decided

Are the tenants entitled to monetary compensation pursuant to section 51 of the Act?

Background and Evidence

The tenancy began on May 15, 2015. Rent in the amount of \$949.00 was payable on the first of each month. The tenancy ended on December 1, 2021.

The landlord inherited the existing tenancy agreement when the landlord purchased the property on September 28, 2021. The property consists of one residential unit and two commercial spaces.

The tenants testified that they moved out of the rental unit on December 1, 2021, after receiving the Notice from the landlord. The tenants provided a copy of the Notice.

The reason for ending the tenancy within the Two Month 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 child of the landlord or landlord's spouse.

The tenants testified that the landlord did not use the rental unit for the purpose stated within the Notice. The tenants stated that the landlord's child did not move into the rental unit. The tenants stated that they went by the rental unit December 8, 11, 16, 17 and 18, 2021 and again January 25, 2022, February 21, 2022, and on March 28, 2022, they went by the rental unit and spoke to a neighbour. The tenants stated they were told that no one has moved into the premises. Filed in evidence are photographs.

The landlord testified that when the tenant's vacated the property the house needed expensive cleaning, as the tenants were growing mushroom in an area that was covered with large black plastic and a large amount of junk was left behind, which included marihuana plants. The landlord stated that they were informed by the junk removal company that the property was potentially used as a former grow up. Filed in evidence are photographs.

The landlord testified that they also had to make minor repairs to the premises, such as replace a broken window as it was just covered in plastic before their child could move in. Filed in evidence are photographs.

The landlord testified that their child moved in approximately the third week of December 2021 and has lived there ever since. The landlord stated that their child has changed their government identification to the residential address. Filed in evidence are copies of the driver's license and MSP records showing the child made these changes in February 2022 as that was the date they were to expire.

The landlord testified that their child is an airline pilot and is regularly gone due to employment. The landlord stated that between December 2021 and March 2022 their child was away with their job and also travelled regularly to the United Kingdom to visit their terminally ill grandmother, who passed away in March 2022. Filed in evidence is a death certificate and a statement from the landlord's child.

The landlord testified their child does not use a vehicle; they prefer to ride their Ebike. The landlord stated that two bikes were stolen from the property on March 28, 2022, which is the same date the tenants stated that they had been by the property and spoke with a neighbour where they claimed they were told no one had moved in. The landlord stated that is simply not true as their child was home at the time. Filed in evidence is correspondence with the police regarding stolen property.

The landlord testified that in one of the commercial spaces their two-children opened up an E-bike store, which was also an ice cream store in the summer. The landlord stated that their child, would help when not off with their job as a pilot. The landlord stated that they have all the mailing for the premises going to one mailbox.

The tenants argue that they were not growing mushrooms in the rental unit. They were using that area as a laboratory relating to growing mushrooms; however, the mushrooms were grown outside on the deck. The tenants stated that this area had to be extremely clean otherwise the mushrooms would not grow.

The tenants argue that the landlord's son identification should have the letter "C" marked on it to identify the rental unit. The tenants argue that the landlord's son is having their mail sent to the commercial space not the rental unit.

Analysis

Based on all of the above, the evidence and testimony from the tenants and landlords, and on a balance of probabilities, I find as follows;

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.

In this case, the tenants vacated on December 1, 2021. The rental unit and the premises to which the tenants rented was not left in a state required by section 37 of the Act and cleaning and repairs were necessary. I find it reasonable that the landlord would do extensive cleaning especially when the tenants were using part of the premises as a laboratory for some role in growing mushrooms. This is not what any reasonable person would expect to find in a residential home.

I accept the evidence that the landlord's son was not occupying the premises for the dates given by the tenants for December 2021. I find this is reasonable as the landlord is entitled to a reasonable period of time after the effective date within the Notice to clean the premises and make suitable for living. The Act only requires the premises to be used for the stated purpose within a reasonable period after the effective date of the Notice. Not on the effective date as the landlord is entitled to reasonable amount of time to clean the premises and make suitable for living.

I accept the landlord's evidence that their child was occupying the premises towards the end of December 2021. This is supported by the testimony of the landlord, the statement of the landlord's child and is supported by the child changing government identification shortly thereafter. I do not accept the tenant's evidence that their address was changed to go to the commercial space to where they were operating a business, because that business was not even in existence in February 2022, it was not until June 2022, and then only after the landlord and child made changes to the commercial space.

Further, if the landlord's son was living elsewhere there would be no need to change their residential address as they would still receive their mail, it is not reasonable to believe that the child would put in a change of address for personal items to go to an empty commercial space. While the tenants argue the address did not have the letter "C" to identify the rental unit; however, neither did it have an "A" or "B" to identify the commercial units. I accept the landlord's testimony that was unnecessary because they have created one mailbox for the entire premises, which I find reasonable as they own the entire building.

Furthermore, I find the other photographs provided by the tenants do not support the rental unit is vacant and unused. These are pictures from the roadway and simply of the exterior of the building. The landlord's child does not use a vehicle and may not have been home or outside of the residence at the time. The landlord's child is an airline pilot and travels for work and made several trips to visit their dying grandmother. I do note in one of the photographs taken at night by the tenants there does appear to be some type of light or glow coming from a window. The only thing the photographs truly support is the landlord, or their child has done an extensive cleanup of the yard, due to the garbage left behind by the tenants.

Furthermore, the landlord's child had to have been home at the residences on March 28, 2022, when their Ebikes were stolen from the property. This is supported by the email exchange with the police. I note this is the same date the tenants said to have been at the premises and talking to a neighbour.

Based on the above, I find the landlord did meet their obligations under the Act. I am satisfied that the landlord's child was occupying the premises for their own purpose and has done so for at least six months. Therefore, I dismiss the tenants' application without leave to reapply. As the tenants were unsuccessful with their application I decline to award the tenants the cost of their filing fee.

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