



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 tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:
:

- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Are the tenants entitled to a monetary order the equivalent of twelve months' rent as claimed?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Counsel for the landlord made the following submissions. The tenancy began on October 1, 2016. The tenancy had a monthly rent payable of \$2400.00 due on the first of each month. On May 16, 2021 the landlord served the tenants with a two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by October July 31, 2021. The ground for the Notice was :

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

Counsel submits that the landlord's wife's parents moved into the unit on August 7, 2021 after the landlord had done some minor renovations in the unit such as painting, changing light fixtures and replacing the carpet with hardwood floors as his father in law has COPD. Counsel submits that the landlords' in-laws went to Iran for a vacation in October 2021 and ended up staying longer than expected due to a death in the family that required them to address financial holdings and property.

Counsel submits that the landlord used the property for the intended purpose as required and specified on the notice. Counsel submits that the home was sold in February 2022 however possession didn't change hands until April 27, 2022 and that during that entire time, the landlords in-laws resided in the unit. Counsel submits that the unit was not renovated and rented for a higher amount as alleged by the tenants. Counsel submits that the tenants claim is meritless and should be dismissed.

The tenants gave the following testimony. The tenants submit that the landlord had mentioned several times to them that they couldn't afford to pay the mortgage. VH testified that she purposely didn't change her mailing address so that she could attend the property to see if anyone was living there. VH testified that she didn't find anyone home when she attended. PJ testified that he drove by the property numerous times

and didn't see anyone living there except contractors' vehicles in the driveway. The tenants request 12 months compensation as they feel the landlord did not use the property for the intended purpose as listed on the notice to end tenancy.

Analysis

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

The tenants allege that the landlords sold the property in February 2022, this is not disputed by the landlord as it is outside of the six-month period required for the personal use as noted under section 49 of the Act. The landlord fully agrees that the property was listed in February 2022 and sold, and that possession was taken by the new owners on April 27, 2022. However, the landlord submits that the home was occupied by his in-laws from August 1, 2021 to April 27, 2022. The landlord provided sworn affidavits to support their claim.

Although the tenants made allegations of attending the property, they gave vague and general comments and could not provide specifics when asked by counsel. They could not provide date and times of their attendance or other items germane to their claim. The landlord has satisfied me, on a balance of probabilities, that they used the property for the intended purpose as specified on the notice to end tenancy, accordingly; I find that the tenants are not entitled to any compensation.

Conclusion

The tenant's application is dismissed in its entirety 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 21, 2022

Residential Tenancy Branch