



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for Compensation from the landlord related to a notice to end tenancy for Landlord's use of property pursuant to section 51.

Both tenants and both landlords attended the hearing. As all parties were present, service of documents was confirmed. The landlords acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenants acknowledged service of the landlord's evidence. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Did the purchaser of the rental unit use it for the stated purpose? If not, are the tenants entitled to be compensated?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenants gave the following testimony. The tenancy began on December 1, 2019 with rent set at \$1,500.00 per month. On April 20, 2021, their landlord served them with a 2 Month Notice to End Tenancy for Landlord's Use, effective June 30, 2021. A copy of the notice was provided as evidence. The reason for ending the tenancy is because: *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the notice because the purchaser or a close family member intends in good faith to occupy the rental unit.* The name and contact information of the purchaser was omitted on the form.

The tenant testified that he received copies of the contracts of purchase and sale, dated April 30th and July 6th, 2021. Both were provided as evidence in the landlord's evidence package. The tenants argue that the landlord did not sell the property at the time they served the notice. The tenants point to a title search print from the Land Title Office indicating that as of July 22, 2021, the property remained registered in the name of the landlord, not the new purchaser.

The landlord gave the following testimony. In the beginning of May, the landlords provided a copy of the contract of purchase and sale because the tenant asked for a copy. They never received a written request, in writing, from the purchaser, "K", to give the tenants a notice to end tenancy, just a text message. The landlord did not provide a copy of the text message from "K" because the landlord understood that the text does not constitute a written request.

The landlords testified that the "K" put his place up for sale and fully intended on occupying it after the tenants vacated it. The notice to end tenancy was not given in bad faith, as the purchaser began moving his goods into the rental unit as the tenant was moving his things out.

At the end of the hearing, the tenant MM acknowledged that “K” the purchaser moved in shortly after he and the co-tenant moved out.

Analysis

The tenants seek compensation pursuant to section 51(2) which states:

51 Tenant's compensation: section 49 notice

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.

This section is discussed in Residential Tenancy Branch Policy Guideline PG-50 [Compensation for Ending a Tenancy].

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

The purpose of compensating tenants with the equivalent of 12 months rent is to prevent landlords from evicting tenants under bad faith, such as to re-renting to higher paying tenants or to “renovict” them. In the matter before me, the tenants openly acknowledged that “K” moved into the rental unit shortly after they vacated it. The tenant MM clearly stated at the end of the hearing that he confirms that “K” moved in shortly after they moved out.

Although “K’s” name did not appear on the notice to end tenancy form, the ultimate reason for ending the tenancy was accomplished within a reasonable period after the effective date of the notice – for the purchaser or his close family member to occupy it. Further, there is no evidence before me that leads me to conclude that “K” and his family did not continue to occupy it for at least 6 months duration. Consequently, the

tenants' application seeking compensation under section 51 is dismissed without leave to reapply.

Conclusion

The 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: December 12, 2022

Residential Tenancy Branch