



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 by way of conference call in response to an Application for Dispute Resolution filed by the Tenant March 14, 2022 (the “Application”). The Tenant applied as follows:

- For compensation because the Landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose
- For reimbursement for the filing fee

The Tenant appeared at the hearing. The Landlord appeared at the hearing with their spouse (J.W.), an interpreter (S.C.) and legal counsel (T.H.). I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence at the start of the hearing, and no issues arose.

During the hearing, Legal Counsel said the Landlord did not receive a letter regarding hydro bills or hydro bills from the Tenant. The Tenant testified that they put this evidence in the mailbox of the rental unit November 07, 2022. The Tenant said they served the evidence at the rental unit to prove a point that the Landlord does not live there.

I found the Tenant failed to comply with section 88 of the *Residential Tenancy Act* (the “Act”) in relation to the method of service because the Tenant served documents at the rental unit when the Tenant’s position is that the Landlord never lived at the rental unit and when the Tenant used the S. Street address for the Landlord on the Application. It is irrelevant whether the Tenant was trying to prove a point, the Tenant was required to

serve the Landlord in accordance with section 88 of the *Act* and failed to do so. Further, service at the rental unit does not prove a point relevant in this hearing because it does not matter where the Landlord lived on November 07, 2022, more than 11 months after the effective date of the Notice.

I heard the parties on whether the Tenant's evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. Legal Counsel submitted it should be excluded while the Tenant submitted it should be admitted. I excluded the evidence because I found it would be unfair to the Landlord to consider it when they have not seen it and could not address it.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all admissible evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation because the Landlord ended the tenancy and has not complied with the *Act* or used the rental unit for the stated purpose?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought \$67,200.00 in compensation pursuant to section 51 of the *Act* based on the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated September 23, 2021 (the "Notice").

A written tenancy agreement was submitted, and the parties agreed it is accurate. There was some discussion of there being another written tenancy agreement between the parties; however, the parties agreed rent was \$5,600.00 per month at the end of the tenancy.

The Notice was submitted. The grounds for the Notice were that the Landlord or Landlord's spouse intended to occupy the rental unit. The effective date of the Notice was November 30, 2021.

The parties agreed the Notice was served on the Tenant September 23, 2021.

The parties agreed the tenancy ended November 08, 2021.

The Landlord testified as follows. The Landlord moved into the rental unit in the middle of December 2021. The Landlord is not currently living in the rental unit because it is being repaired and renovated. The Landlord moved out of the rental unit at the end of June 2022. Prior to moving into the rental unit, the Landlord lived at S. Street with their wife, son and mother-in-law. The Landlord moved from S. Street to the rental unit because they wanted to sell the S. Street house. The S. Street house was listed for sale in May 2022, as shown in the evidence. The S. Street house was not listed until May 2022, because the Landlord's realtor said it would be better to list it in spring and the Landlord's son lived in the house in April 2022. The Landlord moved back to the S. Street house in June 2022, because the market was not good, and their realtor said they should do some repair work on the rental unit. The Landlord intends to look for another house in the area because neither the rental unit nor the S. Street address are suitable for the Landlord and their family.

Legal Counsel provided the following submissions. The hydro bills in evidence starting November 29, 2021, are addressed to the Landlord and show electricity usage at the rental unit. The bills show there was more electricity usage from January to May 2022, and a decrease in usage in July when the Landlord moved out of the rental unit. The gas bills in evidence for December 2021 to June 2022, are addressed to the Landlord. Gas was used to heat the rental unit and the bills show increased usage in December and January and decreased usage in spring and summer. The Landlord has submitted Affidavits of friends of the Landlord who visited the Landlord at the rental unit or picked the Landlord up from the rental unit. There is a photo in evidence of a BBQ held by the Landlord at the rental unit.

The Landlord's spouse was not involved in the hearing until required. The Landlord's spouse testified as follows. The Landlord's spouse and Landlord resided at the rental unit from mid December 2021, to the end of June 2022. In June 2022, the Landlord and Landlord's spouse moved back to the S. Street house. Only the Landlord and Landlord's spouse moved into the rental unit, their son, daughter and mother lived elsewhere. The Landlord and Landlord's spouse used their larger truck to move their belongings to the rental unit. The rental unit was furnished while the Tenant lived in it. The Landlord and Landlord's spouse moved their belongings to the rental unit and did not use the broken oven mentioned by the Tenant.

The Landlord submitted documentary evidence which I have reviewed and will refer to below as necessary.

The Tenant testified as follows. The Tenant's child is best friends with a child who lives next to the rental unit and therefore the Tenant was at the house next to the rental unit often after moving out of the rental unit. The Tenant drives by the rental unit six times a day because their children go to school near it. The blinds in the rental unit were never open, there were never cars in the driveway, the lawn was four feet high and there was rotten and moldy mail in the mailbox. Nobody lived in the rental unit after the Tenant moved out. In relation to the photo of the Landlord having a BBQ at the rental unit, it is not good proof that the Landlord lived in the rental unit because you can see they were using a plastic table and plastic dishware which shows they were not living at the rental unit or settled in the house. The hydro bills submitted are too low for two people to be living in the rental unit at the relevant time. The Tenant drove by the S. Street house many times and the Landlord was always there. The rental unit had been for sale for two years prior to the Notice being issued. The Landlord had showings of the rental unit up until the day the Tenant moved out which shows they did not intend to move into it. The Landlord has not submitted sufficient evidence showing they lived in the rental unit.

In reply, the Landlord testified that nobody was home during the day at the rental unit because the Landlord and Landlord's spouse work.

During reply, Legal Counsel asked the Tenant questions and the Tenant further testified as follows. The four photos they submitted were not taken on the same date. The rental unit has a garage to park vehicles in.

The Tenant submitted documentary evidence which I have reviewed and will refer to below as necessary.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...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...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...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.

The onus is on the Landlord to prove they followed through with the stated purpose of the Notice for at least six months. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Given the conflicting testimony of the parties, I have focused on the documentary evidence before me which supports each position.

I find the most compelling evidence before me to be the Affidavit of S.G., photos of a BBQ at the rental unit and Affidavit of X.D.W. Based on this evidence, I accept that the Landlord lived at the rental unit from mid December of 2021 to the end of June of 2022.

I acknowledge the Tenant has submitted a photo of mail in the mailbox of the rental unit and two photos of blinds drawn in the rental unit. I do not find this to be strong evidence that the Landlord did not live in the rental unit as claimed. I find the photos of the Landlord having a BBQ at the rental unit more compelling.

I acknowledge the Tenant has submitted a signed letter from her friend, who is the neighbour of the rental unit, stating that the rental unit remained vacant after the Tenant moved out. I find it more likely that the Landlord's two friends would know where the Landlord was living from mid December 2021, to the end of June 2022. Further, I place more weight on the Affidavits of the Landlord's friends than the signed witness statement of J.M. because the Affidavits are sworn statements.

I also note that the Landlord has submitted further evidence to support their position that they lived in the rental unit as required.

I find the Landlord has provided sufficient evidence to meet their burden to prove that it is more likely than not that they lived in the rental unit from mid December 2021, to the end of June 2022. Mid December 2021, is within a reasonable period of the effective date of the Notice which was November 30, 2021. The Landlord was required to live in the rental unit for six months, until the end of May 2022, and I find the Landlord did so.

I find the Landlord followed through with the stated purpose of the Notice and therefore the Tenant's Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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: December 12, 2022

Residential Tenancy Branch