



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 concerning an application made by the tenant seeking a monetary order for the landlords' failure to comply with the *Residential Tenancy Act* or using the rental unit for the purpose stated in a Two Month Notice to End Tenancy for Landlord's Use of Property; and to recover the filing fee from the landlords for the cost of the application.

The tenant and one of the named landlords attended the hearing, and was accompanied or assisted by Legal Counsel. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The landlords' Legal Counsel indicated that the landlords' evidence was provided to the tenant by registered mail and by email, however the landlords did not receive supporting evidence from the tenant; the landlords received the tenant's Notice of Dispute Resolution Proceeding. The tenant indicated that he provided the evidence, a tenancy agreement, copy of an advertisement and notice to end the tenancy to 3 separate landlords. The landlords' Legal Counsel and agent were permitted to exit the call to discuss what was received. Upon their return, the landlords' Legal Counsel submitted that the landlords do not dispute that following the end of the tenancy, the property was listed for sale by the landlords, and the landlords do not have any evidence to the contrary or dispute that it happened. Therefore, with the consent of the landlords, all evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the landlords had good faith intent to end the tenancy, or are they required to?

Background and Evidence

The landlord (SL) is a property manager for the owner and testified that this fixed-term tenancy began on February 1, 2018 and reverted to a month-to-month tenancy after January 31, 2019. The tenant vacated the rental unit on August 31, 2021. Rent in the amount of \$3,200.00 was payable on the 1st day of each month and there are no rental arrears, and the tenant was provided with 1 month's rent as compensation. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,600.00 and no pet damage deposit was collected. The landlord believes that security deposit was returned to the tenant, with some deductions. The rental unit is a single family home and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that he received instructions from the owner to end the tenancy because the owner wanted to move back into the rental unit. A copy of the Two Month Notice to End Tenancy for Landlord's Use of Property has been provided for this hearing and it is dated April 23, 2021 and contains an effective date of vacancy of June 30, 2021. The reason for issuing it states: 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), specifying the landlord or the landlord's spouse.

The tenant did not move out on June 30, 2021, but asked if the landlords would be willing to extend the move-out date because the tenant was trying to buy a house. The deal could not complete by then and the tenant needed more time. The landlord had been effectively arranging an extension, and a Mutual Agreement to End Tenancy was signed by the landlord digitally and sent to the tenant for the tenant's signature. The effective date of vacancy was agreed upon to July 31, 2021, and a copy has been provided for this hearing. However the tenant didn't move out on July 31, 2021 and the tenant asked for another extension and another Mutual Agreement to End Tenancy was signed by the parties, a copy of which has also been provided for this hearing. It contains an effective date of vacancy of August 31, 2021, and the tenant moved out on August 31, 2021 and is digitally signed by both parties.

To the best of the landlord's knowledge, the owner did not move in but the owner's spouse did move in.

The house was placed on the market in April, 2022 and sold in June, 2022, which was 10 or 11 months after the tenant moved out.

The tenant testified that the landlord asked the tenant several times to leave and gave the tenant 2 or 3 notices during the tenancy, and the tenant is 99.99% sure they are lying. They say they wanted to move in, but put it on the market 2 or 3 times while the tenant lived there and at the same time saying they wanted to move in, and to do both is impossible.

It was in the middle of the tenant's children's school year, and the tenant said that he didn't believe the landlords, but the tenant wanted to buy a house. That didn't happen and the tenant rented another unit in the area.

Perhaps the landlord went to the rental unit for an Open House, but nobody lived there, and the landlord put it on the market in less than 6 months. The tenant is not sure how long it took, but less than 11 months, meaning that the landlord started to sell 4, 5, or 6 months prior. The tenant lives close to the house and knocked on the door several times to collect mail, but no one was there, and the landlords didn't move in at all.

The tenant disputed the Two Month Notice to End Tenancy for Landlord's Use of Property, but the tenant had found another rental unit and moved out prior to the hearing so there was nothing to dispute.

The tenant signed the first Mutual Agreement to End Tenancy effective on July 31, 2021 and testified that if he didn't sign it, the landlord would remove the tenant by force. The landlord was not present when the tenant signed both Mutual Agreements to End Tenancy. The tenant vacated under pressure with extensions granted by the landlord. The tenant wanted peace for his family and was under pressure. Every day they came to show the house, asked the tenant to leave and ensure the house was clean to show at the Open House, which bothered the tenant and family a lot. That's why the tenant vacated and signed the Mutual Agreements.

The tenant is not certain what the Mutual Agreements state at the top of the page: **"NOTE:** This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy."

The tenant testified that the last dispute was the good faith of the owner, but the tenant does not want to move back in. The main issue is the compensation from the landlord, that they told a lie indicating that the landlord would move in, but they didn't move in and sold the rental unit within a year.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The parties don't see eye to eye on all issues, but considering the evidence and testimony, what happened is that the tenant was given a Two Month Notice to End Tenancy for Landlord's Use of Property by the landlord for the purpose of having the landlord move in. The parties agree that the effective date was June 30, 2021. It is also uncontested that tenant did not move out on June 30, but the parties signed a Mutual Agreement to End Tenancy, to extend the end of the tenancy to July 31, 2021. At that point, the tenant says he had disputed the Notice and there was a hearing which was convened at a much later date, but before that, parties had already signed the Mutual Agreement. The landlord was not present during signing by the tenant, but the date and time-stamp on the first agreement is June 11, 2021 and signed by the tenant on June 15, 2021, so presumably there was some time that the tenant would have to consider whether he wanted to sign it. Both parties also testified that another Mutual Agreement to End Tenancy was signed effective August 31, 2021. The tenant admitted to moving out on August 31, 2021, suggesting that parties relied on the Mutual agreement to End Tenancy. A hearing was scheduled, but the tenancy had already ended so the purpose of that hearing was moot, as testified by the tenant.

While the discussions of having the tenancy end started by the Notice, but ultimately ended by the 2nd Mutual Agreement to End Tenancy. It is not uncommon to settle and the parties agreed to end the tenancy by August 31, 2021. That is also why, most importantly, whether the landlord moved in or not, and the tenant doubts that the landlord moved in, he Mutual Agreements are vital. The landlord testified that the owner's spouse did move in. If so, no compensation is payable. The landlord also testified that it was listed for sale in April, 2022 and 6 months had passed, and the rental home sold in June, 2022, and the landlord had already satisfied the 6 months required by the *Act*. If there is a finding that the landlord did not occupy the rental home, that requirement would only be if the Notice to end the tenancy was what ended the tenancy. The Mutual Agreement clearly states that tenancy will end with no further obligation between the parties, suggesting no obligations owed by the landlords to the tenant.

Finally, while the tenant felt pressured to sign the Mutual Agreements to End the Tenancy, given that it was done at the tenant's own computer in the comfort of his own home, nothing suggests that the Residential Tenancy Branch should prevent the Mutual Agreements, and there is insufficient evidence to raise it to the bar that the 2 Month Notice was still valid and that that is what ended the tenancy. The tenant asked for the

extensions and they were granted by the landlord twice, and effectively the landlords are no longer owing any compensation.

SUBMISSIONS OF THE TENANT:

The tenant was under pressure to sign the Mutual Agreements to End Tenancy, and disputed the Two Month Notice to End Tenancy for Landlord's Use of Property. The tenancy agreement specifies 2 tenants, and only the tenant who attended this hearing signed the extensions. The other tenant didn't sign anything.

Compensation is owed for non-truth of information that the landlord wanted to move in, but didn't. The tenant went there to collect mail and no one was there. The tenant also asked neighbours, and the landlord put the house on the market in the first couple of months.

Analysis

I have reviewed all of the evidentiary material, and there is no doubt that the owner instructed the owner's agents to serve the Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice). There is no doubt that the parties also signed 2 Mutual Agreements to End Tenancy. The parties also agree that the tenant requested that the effective date of vacancy be extended twice because the tenant was trying to purchase a home. The tenant's position is that the tenant signed them out of duress, fearing that the landlords would forcefully remove the tenant and his family.

The *Residential Tenancy Act* states that neither a landlord nor a tenant may withdraw a notice to end a tenancy. The *Act* provides for a tenant who has been served with a Notice for landlord's use of property may end the tenancy earlier than the effective date, by giving the landlord 10 days written notice. Also, generally in cases similar to this one, the onus is on the landlord to establish that the landlord accomplished the stated purpose for ending the tenancy. However, I have reviewed the Mutual Agreements, both of which state: : **"NOTE:** This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy."

(Underlining Added)

The landlord's Notice contains an effective date of vacancy of June 30, 2021. The first Mutual Agreement is effective July 31, 2021 and the second is effective August 31, 2021. The tenancy ended on August 31, 2021. The law states that the landlord must

accomplish the stated purpose within a reasonable time after the effective date of the landlord's Notice (June 30, 2021) and must maintain that stated purpose for at least 6 months from the effective date of the landlord's Notice. The landlord testified that the landlord's spouse moved in, but there is no evidence to support that, nor any evidence of when that may have happened and until when, and is disputed by the tenant.

I agree with Legal Counsel for the landlords that the tenant testified that he digitally signed the Mutual Agreements from his own computer, and therefore had no one there to force the tenant to sign them. Given that the tenant requested the extensions, and the landlords' response was to sign the Mutual Agreements, I am not satisfied that the tenant signed them under duress. If the landlords had indicated that the tenant would be removed by force, the only recourse by the landlords would be to apply for an Order of Possession, and I accept the undisputed testimony of the tenant that he disputed the Notice, but had moved out prior to the hearing. The extensions were requested by the tenant and agreed to by the landlords by way of the Mutual Agreements.

The effective date of vacancy in the Notice was June 30, 2021, and the landlord testified that the rental home was listed for sale in April, 2022, which is about 10 months after the effective date of vacancy. It's not clear how long the landlord's spouse stayed in the rental unit, which in itself is disputed by the tenant. However, I find that once signing the Mutual Agreements, the tenant agreed to vacate by a specific date, which negates the landlords' responsibility respecting accomplishing the stated purpose for ending the tenancy. I dismiss the tenant's application.

Conclusion

For the reasons set out above, the tenant's application is hereby 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 06, 2022

Residential Tenancy Branch