



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 an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- an order of compensation as the tenancy was ended and the landlord did not comply with the Act or use the rental unit for the stated purpose pursuant to section 51 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Landlord JH and tenant DW appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials. However, the tenant stated that he did not receive the landlord’s evidence package until January 2, 2023, and he believed that service was late and not in accordance with the rules.

RTB Rules of Procedure 3.15 states in part:

...the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The tenant received the landlord’s evidence package 11 days prior to the hearing, and therefore within the timeframe outlined in the RTB Rules of Procedure. Based on the testimony of the respective parties I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the tenant entitled to a monetary order for compensation?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenant initially commenced tenancy in the subject residence October 5, 2021. He was served with a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") in July 2022. The reason given by the landlord for the Two Month Notice was that her newly married son and his wife were going to occupy the rental unit. The tenant vacated the rental unit August 30, 2022.

The tenant testified that the son and his wife are not occupying the rental unit, and it is instead occupied by college age men who he believes is the landlord's nephew. The tenant provided an email in evidence from his previous neighbour stating that she has seen a few young men move into the residence. The neighbour further stated that she does not recognize them. The tenant further testified that he believes that the neighbour was familiar with the landlord's son.

The landlord testified that her nephew moved in briefly after the tenant vacated the residence. The nephew normally lived with the landlord, but she was renovating her residence and needed him to vacate the space during the renovations. Her son and his wife were travelling and were not at the residence often. She provided in evidence an email from another tenant in the rental property confirming the landlord's son lived in the rental unit. The landlord also provided in evidence a travel itinerary of the son showing he was away for three days in December. The landlord also provided a utilities bill dated December 14, 2022 for the rental unit showing that the TV and internet for the rental unit were in the son's name. The landlord further testified that the neighbour who sent the email produced by the tenant does not know her son. She further stated that the neighbour's reference to young college age men may be friends of her son who were visiting.

The tenant referred to a letter sent to him by the landlord. The letter was not provided in evidence, but the tenant read the letter. In the letter the landlord stated that the nephew was moving in with the son and his wife. The tenant stated that he believed the landlord has given different stories on who is occupying the residence and therefore is not being truthful.

Analysis

RTB Rules of Procedure 6.6 states, “The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 51 of the Act allows a tenant to seek compensation of 12 months rent if the landlord serves a Two Month Notice For Landlord’s Use and then the landlord does not use the property for the stated purpose.

I find that the tenant has not satisfied his onus to establish that the landlord is not using the rental unit for the purpose stated in the Two Month Notice. The tenant has no direct person knowledge by way of his own observation as to who is living in the rental unit. The neighbour’s email provided by the tenant is not clear as to whether she is familiar with the landlord’s son.

The landlord provided an email from another tenant in the same rental property as the rental unit. That email stated specifically that the landlord’s son was occupying the rental unit. In addition, the landlord provided a utilities bill showing that TV and internet are in the son’s name at the rental unit. I do not place significant weight on the travel itinerary as it is only for three days of travel.

I therefore find that the tenant has not established that the landlord is not using the rental unit for the purpose stated in the Two Month Notice.

The tenant’s application is dismissed. As the tenant is unsuccessful in his application, he is not entitled to recover the filing fee for this application.

Conclusion

The tenant’s application is dismissed. The tenant is not entitled to compensation.

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: January 16, 2023