



Dispute Resolution Services

Page: 1

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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentary evidence to the tenant but only uploaded it to the RTB web portal. It was explained to the landlord that her documentary evidence would not be considered as she did not serve them to the tenant, the landlord advised that she understood. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order the equivalent of twelve months' rent as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave the following testimony. The monthly rent payable of \$1950.00 was due on the first of each month. On September 27, 2022 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenant to move out of the rental unit by April 30, 2022. The ground for the Notice was:

- *the rental unit will be occupied by the landlord or landlord's spouse.*

The tenant moved out of the rental on April 30, 2022. The tenant testified that the landlord listed the property for sale on April 28, 2022. The tenant testified that since the landlord acted in bad faith, he should be entitled to 12 months rent as compensation.

The landlord gave the following testimony. The landlord testified that she never lied to the tenant. The landlord testified that she sent him a text on February 27, 2022 that she was selling the property and that the tenant advised her to serve him a Two Month Notice to End Tenancy for Landlords Use of Property. The landlord testified that she made a condition of sale, that the property would not be available until after November 30, 2022 so that she could meet the requirements of occupying the unit for six months. The landlord testified that she was honest with the tenant from the outset. The landlord testified that she did not end up selling the property and still resides in it.

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 applicant seeks payment of compensation in the amount of twelve times the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the property was not used for the stated purpose for ending the tenancy. The tenant continually stated that the landlord had acted in bad faith. To be clear, the time to question whether or not the landlord acted in bad faith has passed. The tenant could have challenged the notice when it was originally issued to him and could have sought to have it cancelled and to continue his tenancy; he chose not to and move out.

Bad faith is not a consideration when determining whether the compensation is applicable. The determining factor is whether the landlord used the property for the stated purpose or whether there were extenuating circumstances that prevented them

from doing so. The landlord was clear, concise and compelling with her testimony that the tenant was aware of the purpose to end the tenancy. The tenant did not dispute the fact that he was told that the property was going to be listed for sale and that was the reason for ending the tenancy. As the landlord has not sold the property and has been living in the unit since April 30, 2022, she has used the property for the intended purpose for at least six months and therefore no compensation is merited.

The tenant's application is dismissed in its entirety.

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: January 16, 2023

Residential Tenancy Branch