



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

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; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and both tenants attended the hearing. 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.

The landlord acknowledged being served with the tenants' Notice of Dispute Resolution Proceedings package and had no issues with timely service of documents. The landlord did not provide any evidence for this hearing.

Preliminary Issue

The application for dispute resolution filed by the tenants provided a single given name for the landlord and the landlord testified her full name is as it appears on the notice to end tenancy filed as evidence in this proceeding. I amended the landlord's name to match the one printed on the notice to end tenancy pursuant to section 64(3) of the Act.

Issue(s) to be Decided

Has the landlord accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or shown that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months?

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 landlord gave the following testimony. She purchased the rental unit, a basement unit when she purchased the entire home on January 31, 2022. Rent for the lower unit was \$1,500.00 per month. The landlord's realtor served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use in February, 2022. The landlord confirmed the stated reason for ending the tenancy was that the rental unit will be occupied by the landlord, herself.

The landlord testified that this was her first house and that she wanted to renovate it. She needed more money to do renovations and so in mid-April, she placed an ad on Facebook seeking tenants. When she told her father about the ad, her father "told her about the law" and she immediately took down the ad. Instead, her father agreed to help do renovations. After 2 months of doing renovations, the landlord moved into the basement unit herself and rented the upper unit to tenants on May 1st.

The landlord testified that she changed the address on her bills to the rental unit and changed her drivers license to reflect the same. When I asked the tenant why she didn't provide any documentary proof to corroborate her testimony, the tenant responded saying she sent the paperwork to her cousin who just recently responded and it was too late to send it in to the Residential Tenancy Branch.

The tenants gave the following testimony. He spoke to neighbours who told him that people of a different race occupy the lower unit of the house. The landlord could have changed biller addresses to the rental unit but that doesn't prove she lives there. His former landlord had all his bills sent to this address while the tenants lived in the unit, for example.

Analysis

Section 51(2) states:

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.

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or that they used the rental unit for its stated purpose 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.

The landlord testified that she moved into the rental unit 2 months after doing some renovations to it. If this is the case, then the landlord has not accomplished the stated reason for ending the tenancy *within a reasonable period* as required under section 51(2)(a). Residential Tenancy Branch Policy Guideline PG-50 states:

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Perhaps more importantly, the landlord did not provide any documentary evidence to corroborate her testimony that she is occupying the rental unit. Although she stated she changed her drivers license and made other arrangements to reflect the rental unit as her new address, she did not provide a copy of the drivers license or any other bills to verify she has changed her address. I also find the lack of any photographs of the landlord living in the rental unit also adversely affects the credibility of this portion of her testimony. As stated in PG-50, *the onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49*. Without any documentary evidence to support her testimony, I have nothing but the landlord's testimony as evidence.

Conversely, the tenants provided copies of the facebook ad which clearly indicates the landlord sought new tenants for the rental unit within weeks of ending the tenancy. Although the landlord testified she removed the ad when her father told her she couldn't re-rent the unit, once again I have insufficient evidence from the landlord to corroborate this. On a balance of probabilities, I find the landlord has not satisfied me she accomplished the purpose for ending the tenancy or done it within a reasonable period after the effective date of the notice to end tenancy. Consequently, the tenants are entitled to compensation equalling 12 months rent at \$1,550.00 per month [$\$1,550.00 \times 12 = \$18,600.00$]

As the tenant's application was successful, the tenants are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I award the tenants a monetary order in the amount of \$18,700.00.

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 10, 2023

Residential Tenancy Branch