



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

In this application for dispute resolution, the tenants applied on April 18, 2022 for:

- compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose; and
- recovery of the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenants testified that the landlord had violated Rules 3.11 and 3.15 because they did not serve their responsive evidence until almost 7 months after receiving the tenants' Notice of Dispute Resolution Proceeding and evidence. Having checked the tracking numbers to confirm that the landlord's evidence had been delivered on November 25, 2022, nine days before the hearing date, I find it was served as required by Rule 3.15, as it was received by the tenants not less than 7 days before the hearing.

Issues to be Decided

- 1) Are the tenants entitled to compensation because the landlord has not used the rental unit for the stated purpose?
- 2) Are the tenants entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began April 18, 2015 and ended on August 31, 2020. Rent was \$1,535.00, due on the first of the month, and the tenants paid a security deposit of \$750.00, which the landlord has returned.

The tenancy agreement submitted as evidence lists two landlords: JL and LT.

A copy of the Two Month' Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice), dated June 26, 2020, is submitted as evidence. The Notice gives an effective date of August 31, 2020. It states that the reason for the Notice is that the rental unit will be occupied by the landlord or the landlord's spouse, and by the child of the landlord or landlord's spouse.

The tenants submitted that it appears the parties indicated on the Two Month Notice did not occupy the unit within a reasonable time after the effective date of the Notice. The tenants provided as evidence exterior photos of the unit, which the tenants submit show a pattern of garbage and recycling consistently not being put out and brought in in a timely way, from September to November 2020.

The tenants testified they were told that landlord LT would move into the rental unit, but submitted that she never did.

The tenants submitted that the relationship with the landlord had deteriorated, and the landlord had sought to evict them for that reason.

Counsel for the landlord submitted that the landlords' adult daughter (CL) and her family moved into the unit on September 6, 2022; counsel referred to the sworn affidavits of landlord JL and his daughter.

In his affidavit, landlord JL stated that on or around September 6, 2020, his daughter and her family moved into the rental unit and continue to reside there. This is also stated in daughter CL's affidavit.

Also submitted as evidence are utility bills in landlord JL's name, beginning September 2020.

The tenants submitted that the landlord signed the Two Month Notice 4 days after an RTB decision, noted on the cover page of this decision, cancelled the landlord's Four Month Notice, and that in that hearing the landlord failed to prove he had obtained the required permits. The tenants submitted that the foregoing calls the landlord's credibility into question, weakening his affidavit.

The arbitrator in the previous decision referenced the landlord testifying that he will live in the rental unit while work is being done on it, and the arbitrator stated they do not accept that the rental unit needs to be vacant during the work.

Analysis

Section 51(2) of the Act states that the landlord must pay the tenant an amount the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice.

Policy Guideline 2A provides that a tenant may apply for an order for compensation under section 51 of the RTA if a landlord who ended their tenancy under section 49 of the Act has not accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy.

The Guideline states that the onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the Act.

The Two Month Notice indicated the tenancy was ending because the rental unit would be occupied by the landlord or the landlord's spouse, and by the child of the landlord or landlord's spouse.

The tenants submitted that it appears the landlords have not accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice. In support, the tenants submitted exterior photos of the unit, which they state demonstrate that garbage and recycling were not being put out and brought in in a timely way. The tenants submitted that landlord LT never moved into the rental unit, and that the landlords had sought to evict the tenants after the relationship deteriorated.

The tenants questioned landlord JL's credibility due to the timing of the Two Month Notice relative to the cancellation of a Four Month Notice.

The effective date of the Two Month Notice is August 31, 2020. Both landlord JL and his daughter, CL, have submitted sworn affidavits that CL and her family moved into the rental unit on or around September 6, 2020. The utility bills submitted as evidence, which are in landlord JL's name beginning September 2020, also support the landlords' claim that a close family member was occupying the unit.

Based on the evidence before me, I find, on a balance of probabilities, that the landlords accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, that being that the rental unit will be occupied by the landlord or the landlord's close family member.

Though the Notice indicates that both the landlord and their child will move in, I find that having the landlord's child move into the rental unit is sufficient to meet the landlords' obligation under the Act.

As I find the landlord met their obligation, the tenants are not entitled to compensation.

As the tenants are unsuccessful in their application, I decline to award the filing fee.

Conclusion

The tenants' application is dismissed.

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 03, 2023

Residential Tenancy Branch