



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On May 31, 2022, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant were present at the hearing. At the start of the hearing, I introduced myself and the participants.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The Tenant and Landlord testified that the tenancy began in 2018 or 2019, and was on a month-to-month basis. Rent in the amount of \$875.00 was due to be paid to the

Landlord by the first day of each month. The rental unit is a carriage house of approximately 500 square feet with a loft area for the bed. The Landlord lives on the residential property in a house approximately 50 feet away from the rental unit.

The Landlord decided he wanted to occupy the rental unit and issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 15, 2022 ("the Two Month Notice"). The effective date of the Two Month Notice is April 15, 2022. The Landlord provided a copy of the Two Month Notice.

The reason cited for ending the tenancy within the Two Month Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member: Landlord or Landlords spouse.

The Tenant accepted the Two Month Notice and moved out of the rental unit before the end of March, 2022.

The Tenant testified that the Landlord did not use the suite for a six month period and instead posted an advertisement to re-rent the unit at a higher monthly rent. The Tenant provided a copy of an advertisement dated May 1, showing the unit was for rent at \$1,500.00 per month.

The Tenant testified that when they asked the Landlord why he issued the Two Month Notice, the Landlord stated that he wants to use the space as a home office.

The Tenant stated that the Landlord acted in bad faith. The Tenant's father stated that they have no idea if he used the suite as an office. The Tenant is seeking compensation of \$10,500.00 which is twelve months of rent payable under the tenancy agreement.

In reply, the Landlord provided testimony confirming that he issued the Two Month Notice and he stated that he offered to withdraw the notice when the Tenant became upset. The Tenant accepted the Two Month Notice and moved out.

With regard to the advertisement, the Landlord testified that he listed his home for sale in June, 2022 and the advertisement was a market test to see what the response would be to rent at \$1,500.00. The Landlord testified that the for sale listing of the property was active until November 2022, and the property was not sold.

The Landlord testified that he did use the rental unit as his office, and he did not rent it out to anyone or receive rent from any source until January 2023 when he rented the unit to a new tenant. The Landlord provided signed and dated letters from his associates that indicate they had occasion to enter the rental unit in June and July 2022 and that the Landlord had an office set up in the unit.

When the Landlord was asked if there were any extenuating circumstances that prevented him from achieving the purpose of the Two Month Notice, he replied that he had nothing further than what he already submitted.

Analysis

The parties are in agreement that the Landlord issued the Tenant a Two Month Notice to End Tenancy for Landlord's Use of Property for the rental unit to be occupied by the Landlord or Landlord's spouse.

Section 49(3) of the Act permits a landlord to end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member explains the concept of good faith and vacant possession as follows:

"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement..."

Vacant possession

Other definitions of "occupy" such as "to hold and keep for use" (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

Reclaiming a rental unit as living space

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

Section 51 (2) of the Act provides that a landlord must pay the tenant 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:

- (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.*

Section 51.1(2) of the Act provides that the director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from:

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

Compensation for Breach of Section 51

After considering the legislation and policy and the testimony and evidence before me, I make the following findings:

The Tenant's evidence was that the Landlord informed the Tenant that he is ending the tenancy because he intends on using the unit as office space. The Landlord testified that he did use the rental unit as an office space and provided documentary evidence to support his testimony. I find that the Landlord used the vacant carriage house/ rental unit as an office. I find that the Landlord reclaimed the carriage home as living space.

I find that the Landlords explanation on the advertisement of the rental unit is reasonable given his explanation that he was listing the residential property for sale. The Landlord provided a letter dated Oct 4, 2022 from a realtor who states that he attended the studio apartment several times for photographs and showings during the spring and summer acting as the Landlord's real estate agent.

I accept the Landlord's testimony that he did not rent out the carriage house within six months of the Tenant vacating the unit. I also find that the residential property never sold; and the Landlord still occupies the property; therefore, the property was not sold to another person within six months of the Tenant vacating the unit. The Landlord testified that he rented the unit out in January 2023, which is 10 months after the Tenant moved out.

I find that the Landlord used the 500 square foot carriage house located adjacent to his home as his home office for more than a six month period of time after the Tenant vacated and that the reason to end the tenancy achieves the intended purpose stated within the Two Month Notice.

The Tenant's application for compensation of \$10,500.00 is dismissed without leave to reapply.

Conclusion

The Landlord used the rental unit for the purpose stated within the Two Month Notice within a reasonable period after the effective date of the Two Month Notice.

The Tenant's application for compensation of \$10,500.00 is 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: February 14, 2023