



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$26,929.25 for 12 months of rent as compensation pursuant to section 51(2) of the Act, for 7 months of storage locker fees, and to recover the cost of the filing fee.

The tenants and the landlords attended the teleconference hearing, which lasted a total of 60 minutes. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Other than a transcript which was not served and was excluded under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), both parties confirmed having been served with and having the opportunity to review evidence from both parties prior to the hearing. Given the above, with the exception of the excluded transcript, I find the parties were sufficiently served under the Act.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Are the tenants entitled to money owed for compensation for damage or loss under the Act?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The parties agreed that a fixed-term tenancy began on August 1, 2020 and converted to a month-to-month tenancy after August 1, 2021. The parties agreed that by the end of the tenancy, the tenants were paying \$2,000 per month for rent.

The parties confirmed that the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice). The 2 Month Notice was dated July 31, 2021 and the effective vacancy date was listed as September 30, 2021.

The tenants confirmed that they did not file an application to dispute the 2 Month Notice and as such, the parties were advised during the hearing that their application for 7 months of storage locker fees was dismissed without leave to reapply, as they accepted the 2 Month Notice and are not entitled to storage locker fees after they vacate the rental unit as a result. Given the above, the remainder of the hearing focussed on the tenants' claim for 12 months of compensation due to their allegation that the landlords did not comply with the reason stated on the 2 Month Notice.

The tenants write in their application the following:

My partner and I lived at the same address as our landlords. Our suite was part of the duplex that we all lived in- they were on the top, we were on the bottom. Our landlords served us with a two month eviction notice on July 31, 2021. They claimed that they were taking back use of the suite for a spouse to live in due to "a change in family circumstances". We have evidence that they have not acted in good faith and used the suite the way they intended to as per the eviction notice. It has been over 6 months since my partner and I moved out of the suite and not only have our landlords not moved into it themselves, they have rented it to new tenants. My partner stopped by to pick up mail in December 2021 and saw a young woman through the window of the suite. At the beginning of April 2022 we had a friend stop by and the new tenant opened the door, saying that Jess and Kirk live upstairs not in the suite and that she and others had been living in the suite at least 3 months (we have recorded evidence of this conversation). We have also witnessed both Jess and Kirk coming and going from the entrance to their part of the house.

The landlords testified that they have occupied the rental unit since the first week of October 2021 and continue to do so. The landlords described the home as a half-duplex which is comprised of 3 upper bedrooms with a kitchen and 1.5 bathrooms while the lower portion 2 bedrooms, a kitchen, bathroom and living room.

The rental unit was only the lower portion as the tenants confirmed they were not renting the upper portion or had access to the upper portion of the home.

The landlords testified that they were intending to and have gradually reconfigured the home to better accommodate their two children, ages 4.5 and 6.5. The landlords stated that they need more room which is why the following reason was selected on the 2 Month Notice:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
Please indicate which close family member will occupy the unit.	
<input checked="" type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse

The landlords also supplied a copy of the original plans for the entire home and the original MLS listing supporting that the lower suite can be used as a recreation room and bedrooms not just as a suite. The landlords submitted photo evidence to support the before and after photos of the wall separating the upper and lower portions of the home being removed by the landlords. The landlords stated they can better access the lower portion of the home with that wall being removed. The landlords testified that they use the lower portion entrance as a mud room.

The landlords also stated that since they removed the dividing wall their father has been placed into a care home as vaccinations negatively impacted their father. The landlords stated that eventually the landlords made the decision due to the care home costs, that they would re-rent the rental unit but did not re-install the dividing wall and waited to rent out the rental unit until April 1, 2022. The rental amount for the new tenants was not higher but the same at \$2,100 per month.

The tenants' response to the landlords was to present their video evidence, which was taken on April 2, 2022 by a friend of the tenants. The tenants claim that the video is evidence to support that the tenant shown in the video confirmed that they have been there for 3 months, which I will address later in this decision.

The tenants said they became suspicious in January 2022 that the landlords may have re-rented when the landlord attended their place of work to deliver mail. Tenant DH stated that this made them think that the landlords did not want them near the home. The tenants stated that they saw new signs of life and new décor such as a dream-catcher and that it was tidy, which was inconsistent with how the landlords kept their

home in the upper portion of the home. The tenants also claim that due to a pair of skis being on the porch that this evidence supports that new tenants were occupying the rental unit as it would be unusual for the landlords to have skis on the porch.

The landlords denied re-renting the rental unit before April 1, 2022. The landlords submitted a tenancy agreement confirming April 1, 2022 as the start date and the tenants claim that a tenancy agreement is not enough evidence to prove that they did not re-rent before April 1, 2022. The tenants also claim that the tenancy agreement is not legitimate.

The landlords stated that they intended to rent primarily to Karli and that Shea is a friend of the Karli and does not know the landlords as well as Karli does, as Karli worked at a daycare and the landlords thought they could help out Karli by offering a place to live as of April 1, 2022. The landlords stated that the video only supports that Shea was probably not familiar with what was going on.

Analysis

Based on the documentary evidence, the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, section 51(2) of the Act states:

(2) 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.

[emphasis added]

I have reviewed the 52 second video submitted by the tenants dated April 2, 2022. At approximately 26 seconds into the 52 second video, a female tenant comes to the door and the male who knocked asks for a person who has never lived there. The female tenant, identified by the landlord as Shea, states "you may have the wrong building" as

part of their response and the male makes an additional comment before Shea responds in part with “nobody has been here for at least 3 months.” I disagree with the tenants that this video proves that the tenants have been living there for 3 months, as the tenant earlier in the video makes reference to the name of the landlords living upstairs. I find that Shea is not speaking with authority about the home and appears more confused than anything about who is knocking at their door asking who lives there. I find that any reasonable person would be confused if a person attended to ask who lives there from a safety perspective. Given the above, I afford no weight to the video and also find that it was not taken within the 6 month period when the landlords were to use the rental unit for the stated purpose and instead was taken April 2, 2022. The tenants could have provided the same video taken months earlier but failed to do so, and as such, I afford the video no weight.

I afford significant weight to the photo evidence submitted by the landlords that I find supports that a wall separating the rental unit as it stood in September 2021 was removed to allow for better access to the lower portion by the landlords. I find this action by the landlords supports the testimony and version of events as claimed by the landlords. Whereas, I find the tenants are relying on speculation and that I decline to award any compensation under the Act based on speculation.

I also disagree with the tenants that the landlords require more than a tenancy agreement to support that a tenancy agreement exists, as I find the tenancy agreement holds significant weight as it is a contract between parties. I also find that both parties were affirmed and I find the landlords have presented documentary evidence to rebut the claim of the tenants versus responding with speculation.

As the 2 Month Notice effective vacancy date was listed as September 30, 2021 and the tenants vacated on September 28, 2021, I find the landlords did use the rental unit for the stated purpose and did not re-rent the rental unit until April 1, 2022, which I find is six months after the effective vacancy date. I find the six month period ended March 31, 2022 and that the landlords were entitled to re-rent as of April 1, 2022 without penalty under the Act.

I find it is not necessary to consider the extenuating circumstances clause set out in section 51(3) of the Act as I find the landlords have met the burden of proof by providing sufficient evidence that they have occupied the rental unit for a period of six months following the effective vacancy date and did not re-rent the rental unit until April 1, 2022. Therefore, I **dismiss** the tenants’ application in full without leave to reapply, as I find the landlord has met the burden of proof to support that they complied with the reason

stated on the 2 Month Notice.

The filing is not granted as the tenants' application was dismissed without leave to reapply.

Conclusion

The tenants' application is dismissed in full, without leave to reapply.

The filing fee is not granted.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 2, 2023

Residential Tenancy Branch