



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants December 19, 2022 (the “Application”). The Tenants applied as follows:

- For compensation because the tenancy ended as a result of a two, four, or 12 Month Notice to End Tenancy, and the Landlords have not complied with the Act or used the rental unit for the stated purpose
- To recover the filing fee

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package. The Landlord testified that they did not receive the Tenants’ evidence.

The Tenants had submitted a video, Two Month Notice, screenshot of a note dated June 01, 2022, photo of the rental unit, second screenshot of a note and the tenancy agreement between the parties. The Tenant testified that everything was served on the Landlords, except the video.

The Tenants’ video had to be served on the Landlords pursuant to rule 3.14 of the Rules. Pursuant to rule 3.17 of the Rules, I exclude the video because I find it would be unfair to consider it when the Landlords have not seen it and could not address it at the hearing.

Admissibility of the Two Month Notice and tenancy agreement between the parties is a non-issue because these documents came from the Landlords and were also submitted by the Landlords.

In relation to the two screenshots and photo, the parties disagreed about whether these were served on the Landlords. The Tenants have the onus to prove their evidence was served on the Landlords. The Tenants did not provide proof of service and therefore I am not satisfied they served their evidence on the Landlords as required by rule 3.14 of the Rules. Pursuant to rule 3.17 of the Rules, I exclude the two screenshots and photo because I find it would be unfair to consider these when the Landlords have not seen them and could not address them at the hearing.

The Tenant confirmed receipt of the Landlords' evidence and confirmed there were no issues with the timing of service.

Given the above, I will only refer to the Landlords' evidence in this Decision.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all admissible evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation because the tenancy ended as a result of a two, four, or 12 Month Notice to End Tenancy, and the Landlords have not complied with the Act or used the rental unit for the stated purpose?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Tenants sought \$54,000.00 pursuant to section 51 of the *Residential Tenancy Act* (the "Act") in relation to a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 16, 2022 (the "Notice"). The grounds for the Notice were that the Landlord or Landlord's spouse were going to move into the rental unit. The effective date of the Notice was May 31, 2022.

A written tenancy agreement between the parties was submitted, and the parties agreed it is accurate. The parties agreed rent was \$4,700.00 at the end of the tenancy. The parties agreed the Tenants moved out of the rental unit May 31, 2022.

The Landlord testified as follows.

The Landlord and their family moved into the rental unit July 22, 2022, and have lived there ever since. The photo evidence proves when the Landlord and their family moved into the rental unit.

The Landlord and their family were living in another country on a temporary basis for the Landlord's work. In December 2021, the Landlord's employer confirmed the Landlord would not stay in the other country past July of 2022. The Landlord told their agents the tenancy with the Tenants could go into June or July; however, the Tenants wanted to move out May 31, 2022.

On January 14, 2022, the Landlord learned that there were dogs living in the rental unit contrary to the tenancy agreement. On February 16, 2022, the Notice was served on the Tenants. On May 31, 2022, a move-out inspection was done. The rental unit was in a poor state with pet odour, urine odour, stains, damage to curtains and scratches on the floor. The rental unit could not be occupied by the Landlord or their family given the state of the rental unit.

Starting June 01, 2022, cleaning, restoration, pet odour removal and general maintenance and repairs took place in the rental unit. The pet odour would not come out of the rental unit and it was recommended that the Landlord contact COIT. In June, the Landlord arranged for COIT to attend the rental unit; however, the company was booking into July. The Landlord and their family still could not live in the rental unit due to the issues mentioned. COIT attended the rental unit and said the pet odour and wetness from pet urine behind the baseboards in the basement of the rental unit were beyond repair and could not be remediated. Given this, the Landlords contacted Vertical Grain. The rental unit required restoration and the basement to be reconfigured so that the Landlords could each have an office and their children could stay in the basement. Vertical Grain took on the work of carpet and baseboard removal due to the pet damage. Vertical Grain started their work in June.

On June 19 and 25, 2022, the Landlord attended the rental unit for the first time given they were living in another country. The Landlord delayed their move into the rental unit

because of the pet damage. The Landlord returned to their home in another country at which point they got COVID and had to isolate which caused further delay.

During the renovations of the rental unit, asbestos were found which meant the basement had to be sealed off for safety reasons and the Landlord and their family had to wait for abatement of the asbestos. The earliest an abatement team could attend the rental unit was July 20, 2022.

During this time, the Landlord's spouse also got COVID and had to isolate which further delayed things because the Landlord and their family could not travel back to Canada. However, the Landlord and their family could not live in the rental unit at this point anyway due to the asbestos issue, which was addressed July 20, 2022. The Landlord and their family moved into the rental unit July 22, 2022, and have lived there since. The Landlords have renovated parts of the basement while living in the rental unit. The Landlords did receive a building permit for work being done on the rental unit; however, it is restricted to moving the laundry room in the basement and upgrading the hallway floorplan in the basement.

The remediation work, delay in renovations, COVID, timelines for services and international travel were extenuating circumstances. The Landlords moved into the rental unit as soon as possible given the extenuating circumstances.

I have reviewed the Landlords' evidence and will refer to it below as necessary.

The Tenant did not dispute that the Landlords and their family moved into the rental unit July 22, 2022. The issues raised by the Tenant were the renovations done to the rental unit and the delay between May 31 and July 22, 2022, when the Landlords moved in.

The Tenant testified as follows.

An inspection of the rental unit was done January of 2022, and there was no damage found in the rental unit. The Landlords did give the Tenants notice about dogs being in the rental unit in January. However, the dogs did not live at the rental unit, they simply visited when the Tenants' family was over. The dogs mainly stayed in the front yard. The pet odour in the rental unit was there from the start of the tenancy and was not caused by the Tenants.

Vertical Grain attended the rental unit to take measurements while the Tenants were still living in the unit. A contractor was at the rental unit June 01, 2022, and said they were starting the work then. The Landlords were doing planned renovations June 01, 2022, as soon as the Tenants moved out. There was a building permit in the window of the rental unit in the fall of 2022 which suggests the Landlords applied for the building permit at the end of the tenancy or after the Tenants moved out. The Tenants take issue with the Landlords stating that the condition of the rental unit at the end of the tenancy was what lead to renovations. The Tenants believe the Landlords had planned to do major renovations all along. The Landlords' sister attended the rental unit in March and said the Landlords planned to do large renovations in the rental unit and might live in the laneway house. The Landlords should have issued a Four Month Notice for renovations.

The Tenant confirmed the Tenants rented the entire house. The Tenant testified that renovations only occurred in the basement of the house.

In reply, the Landlord testified as follows. The Landlords acknowledge they intended to renovate the rental unit; however, they planned to renovate while moving into the rental unit. The Landlords never intended to live in a laneway house which is on a separate property and is one bedroom. Further, there was no need to live in the laneway house because the renovations planned were such that the Landlords could live in the rental unit. The Landlords dispute that there was pet odour or damage in the rental unit at the start of the tenancy because they received the move-in inspection report and it showed the rental unit was in good condition, whereas the move-out inspection report differed. The prior tenant of the rental unit did have a dog; however, the move-out inspection report for them showed the rental unit was fine. Further, the odour and wetness in the rental unit at the end of the tenancy was fresh and literally wet and therefore could not have been from a year and a half earlier.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...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...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...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.

(3) The director may excuse the landlord...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 applicable, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(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.

RTB Policy Guideline 50 addresses section 51 of the *Act*. The onus is on the Landlords to prove they followed through with the stated purpose of the Notice within a reasonable period after the effective date of the Notice and for at least six months.

I find the Landlords followed through with the stated purpose of the Notice because the parties agreed the Landlords and their family moved into the rental unit July 22, 2022. I did not understand the Tenant to dispute that the Landlords have remained living in the rental unit since this date.

The issue here is whether the Landlords moved into the rental unit within a reasonable period after May 31, 2022, the effective date of the Notice. Another issue raised by the Tenant is the renovations; however, the Landlords were allowed to renovate the rental

unit before moving into it and while living in it, as long as they moved into the rental unit within a reasonable period after May 31, 2022.

RTB Policy Guideline 50 states as follows about a reasonable period:

Reasonable Period

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

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.**

(emphasis added)

Here, the Landlords moved into the rental unit a month and 22 days after the effective date of the Notice. I find this to be within a reasonable period in the circumstances because I accept the Landlords' reasons for the delay including that there was pet odour and pet damage in the rental unit at the end of the tenancy which needed to be remediated, delays in having the rental unit remediated, international travel involved in moving, the Landlords contracting COVID thus delaying plans and finding asbestos in the rental unit while doing renovations which required abatement. I have reviewed the Landlords' documentary evidence and I find it supports the Landlords' position about these issues arising between May 31, 2022, and July 22, 2022. Considering these

issues, I find the month and 22 days it took the Landlords to move into the rental unit to be reasonable.

Given the above, I find the Landlords complied with the *Act* and that the Tenants are not entitled to compensation pursuant to section 51 of the *Act*.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 22, 2023

Residential Tenancy Branch