



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

:

- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

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 a monetary order as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties agreed to the following. The tenancy began on May 31, 2011 and ended on May 1, 2022. The monthly rent payable of \$850.00 was due on the first of each month. On February 16, 2022 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenants to move out of the rental unit by April 30, 2022. The ground for the Notice was:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The tenant testified that he moved out of the rental unit on May 1, 2022 and out of province to Saskatchewan. The tenant testified that he has not returned to the rental unit since that time. The tenant testified that he can't prove what the landlord has done since he's moved out. The tenant testified that the landlord had asked him to start showing the unit as he wished to rent it out. The tenant testified that the landlord offered him the unit for \$1750 per month which he could not afford. The tenant testified that it's clear that the landlord wanted to rent the unit out and was not going to use the unit. The tenant seeks 12 months rent as compensation along with moving costs and the filing fee for a total claim of \$13,300.00.

The landlord gave the following testimony. The landlord testified that when he asked the tenant to assist him in renting the unit it was so that he could obtain a roommate. The landlord testified that during the time of closing on this property after purchase, he and his girlfriend were able to purchase a another home. The landlord testified that it was illogical for him and his girlfriend to move into this unit and then again later in the nearby future into the home that they recently purchased. The landlord testified that he moved into the unit on May 2nd 2022 and resided in there until December 14th 2022. The landlord testified that he did not get a roommate until June 15, 2022. The landlord

testified that his girlfriend moved into the other home where they now both reside. The landlord testified that he used the property for the intended purpose for over six months and took on a roommate in June 2022 to help with the costs. The landlord testified that much of the miscommunication resulted from him asking the tenant to assist in getting him a roommate to help with the costs after he moved into the unit. The landlord testified that there was no intention to deceive or mislead the tenant. The landlord testified no compensation should be paid because the property was used by him for over six months after the tenancy had ended.

Analysis

It is worth noting that at the outset of the hearing I explained to the parties that this was not a matter where bad faith would apply. That is an issue that could have been addressed while the tenancy was still in effect and if the tenant felt that the notice was issued in bad faith and could challenge it to continue his tenancy, he chose to move out.

I further explained that this matter was whether or not the landlord used the property for the intended purposes as stated on the notice to end tenancy and that they used the property for at least six months after the tenancy ended. However, the tenant continually referred to the time leading up to the end of his tenancy as opposed to the six months immediately after his tenancy ended which is the timeframe that I must consider in making this decision. The tenant stated on several occasions he had no knowledge of what happened with the unit after he moved out on May 1st 2022.

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

The applicant seeks payment of compensation in the amount of twelve times the monthly rent under the tenancy agreement pursuant to the quoted section of the Act because the property was not used for the stated purpose for ending the tenancy. In the tenant's own testimony, he stated that after May 1, 2022, "I know nothing". The tenant continually stated that he couldn't prove or even know what the landlord did with the property after he moved out.

Despite my clear directions at the outset of the hearing outlining the test that I must consider the tenant continually referred to events during his tenancy, not the six months after it ended. Based on the clear, concise, and compelling evidence from the landlord, the supporting documentation and on a balance of probabilities, I find that the landlord did use the property for the intended purpose as noted on the notice to end tenancy for at least six months, and therefore no compensation is payable to the tenant.

Conclusion

The tenant's application is dismissed in its entirety 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 16, 2023

Residential Tenancy Branch