



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 Tenant's Application for Dispute Resolution made on November 22, 2022. The Tenant applied for compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated June 16, 2022 (the Two Month Notice) and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

During the hearing, HS confirmed that ZR, her son, is a minor. Therefore, pursuant to section 64 of the Act, I amend the Tenant's application to remove ZR as a party.

The Tenant and the Landlord attended the hearing and provided affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Proceeding package and a subsequent evidence package were served on the Landlord by registered mail. The Landlord acknowledged receipt of these documents. In addition, the Landlord testified that the documentary evidence upon which he intended to rely was served on the Tenant by registered mail. The Tenant acknowledged receipt.

No further issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation from the Landlord related to the Two Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began late 2018 and ended on July 31, 2022, on which date the Tenant vacated the rental property. The parties agreed that rent during the tenancy was \$2,000.00 per month. A copy of the tenancy agreement was submitted into evidence.

The Tenant asserted that the Landlord did not do what was indicated in the Two Month Notice as the basis for ending the tenancy. In support, the Tenant testified that she made a number of trips back to the rental property to collect mail and noticed that the house did not appear to be occupied. The Tenant testified that she spoke to a neighbour, GR, who advised that no one appeared to be living at the rental property. The Tenant submitted a hand-written note from GR dated November 18, 2022. In it, he states he has not seen anyone living at the rental property since the Tenant moved out.

The Tenant also submitted several videos taken at the rental property, taken on or about November 17, 2022. One video shows snow on the driveway and front steps that appears to be undisturbed. Another video shows the area underneath the front stairs. The Tenant noted there were no garden implements or other similar belongings there. Finally, a video taken through a basement window shows the interior of the rental property.

In addition, the Tenant submitted a type-written letter from CD dated November 14, 2022. The Tenant testified that CD was a potential landlord the Tenant submitted an application to after vacating the rental property. The letter states:

When I asked [the Landlord] why he had evicted her, he told me it was because he got tired of all the emails and requests [HS] made for him to fix and/or tend to different things on the property. He found it annoying.

In reply, the Landlord testified that he ended the tenancy and moved into the rental property in August 2022. This was done in an effort to make his life easier. In support, the Landlord referred to a letter from KR dated January 15, 2023. In it, she confirms she helped the Landlord move “a bed and some boxes” to the rental property on August 11, 2022. KR also noted that “the house already had a sofa and table,” which the Landlord advised had been moved there the week before.

The Landlord acknowledged that he owns two houses and collects mail at both. A photograph of a package addressed to him at the rental property was submitted in support.

The Landlord testified that he spends three nights a week at his other house because it is more conveniently located near his employment. The Landlord testified that he spends the remainder of his nights at the rental property. The Tenant testified that he is very busy and remains active. As a result, he is frequently away from either home. The Landlord testified that neither house is rented.

In response to the Tenant’s video evidence, the Landlord testified that he was spending a lot of time with his girlfriend in November 2022. He testified that he spent time leading up to a surgery on November 24, 2022 with his girlfriend, and had a period of convalescence with his girlfriend after the surgery.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the Act confirms that a landlord may end a tenancy in respect of a rental property if the landlord intends in good faith to occupy the rental property.

Section 51(2) of the Act provides that compensation may be due if a landlord does not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if the rental property is not used for that stated purpose for at least six months' duration, beginning within a reasonable period after the effective date of the notice. The Landlord bear the onus of proving they did what was stated as the reason for ending the tenancy.

In this case, I find the Landlord has provided sufficient evidence for me to conclude that he occupied the rental property for the purposes of the Act in August 2022. I accept that the Landlord owns two homes in the area and stays in both throughout the week, and I am unaware of any provision in the Act which prohibits such an arrangement. Further, I accept the Landlord's explanation for being away from the rental property – a surgery – in November 2022. I also accept the Landlord's testimony that has not rented either of his homes, which was not disputed by the Tenant, and that he lives an active lifestyle which frequently keeps him away from both homes.

Further, I place little weight on the letters from GR, CD, and KR as the authors did not attend the hearing to provide testimony in support.

Considering the above, I find that the Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant's application 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 24, 2023

Residential Tenancy Branch