



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants on May 26, 2022 under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for compensation and for recovery of the filing fee.

The Tenants, the Landlord E.R., the Landlords’ Counsel J.N., and the Landlords’ witness L.R. attended the hearing at the appointed date and time. At the start of the hearing the parties confirmed service of their respective Application and documentary evidence packages. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order for compensation and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on May 1, 2011. Rent in the amount of \$1,360.00 was due to the Landlord on the first day of each month.

The Tenants paid a security deposit in the amount of \$600.00. The tenancy ended on August 31, 2021 in compliance with the Two Month Notice.

The parties testified and agreed that the Landlord served the Tenants with a Two Month Notice dated June 19, 2021 with an effective date of August 31, 2021 as the Landlord's daughter intended to occupy the rental unit with her spouse.

The Tenants stated that they returned to the rental unit in March of 2022 to collect mail. The Tenants stated that they found the rental unit was undergoing renovations. The Tenants stated that it did not appear as though anyone was occupying the rental unit. The Tenants provided a picture of the rental unit in support. The Tenants stated that the Landlord did not accomplish the stated purpose of the Two Month Notice within a reasonable amount of time and for at least six months.

The Landlord responded by stating that their daughter and her spouse moved into the rental unit a few days after the Tenants vacated the rental unit. The Landlord stated that the Tenants had occupied the rental unit for 10 years, therefore, the Landlord's daughter wished to complete some cosmetic repairs to the rental unit. The Landlord stated that both her daughter and her daughter's spouse work full time, therefore, the repairs took place in the evenings and on weekends when time and finances permitted.

The Landlord made her daughter L.R. available during the hearing who confirmed that she is the Landlord's daughter and that she and her spouse moved into the rental unit shortly after the Tenants vacated the rental unit. L.R. confirmed that they are completing cosmetic repairs to the rental unit while they continue to occupy the rental unit to this day. L.R. stated that it is her intent to continue occupying the rental unit long term. The Landlord provided pictures of the occupied rental unit showing L.R.'s possessions and the repairs made to the rental unit.

The Tenants stated that the Landlord has not demonstrated that they are living in the rental unit and that the Landlord's pictures are not time stamped. The Tenants stated that aside from a kitchen table in the rental unit, they could not view any other furniture.

Analysis

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

Section 51(2) of the Act states that in addition to the amount payable under subsection one, if 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 the rental unit is not used for that stated purpose for at least six 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 to 12 times the monthly rent payable under the tenancy agreement.

In this case, the parties agreed that the Tenants moved out of the rental unit on August 31, 2021 so that the Landlord's daughter L.R. could occupy the rental unit with her spouse. I accept that the parties agreed that L.R. completed some repairs to the rental unit.

Given that the tenancy lasted 10 years, I find that it is reasonable to expect that L.R. would complete improvements to the rental unit for their intended long-term use. Furthermore, I find there is insufficient evidence before me to demonstrate that the Landlord has acted contrary to the intentions set out in the Two Month Notice, such as re-renting the home to another tenant. I find that the Landlord has provided sufficient evidence to demonstrate that it is more likely than not that L.R. occupies the rental unit and has fulfilled the intended purpose noted on the Two Month Notice.

In light of the above, I dismiss the Tenants' Application without leave to reapply. As the Tenants were not successful with their Application, I find that they are not entitled to the return of their filing fee.

Conclusion

The Tenants have provided insufficient evidence to demonstrate that the Landlord has acted contrary to the Two Month Notice for Landlord's Use. I dismiss the Tenants Application 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

Residential Tenancy Branch