



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 by the tenant for a monetary compensation pursuant to section 51 of the Act, that is equal to the equivalent of 12 months of rent and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Is the tenant entitled to compensation under the Act?

Background and Evidence

The tenancy began in September 2014. Rent in the amount of \$1,800.00 was payable on the first of each month. A security deposit of \$900.00 was paid by the tenant.

The tenant testified that they moved out of the rental unit on November 27, 2021 after receiving a Two Month Notice to End Tenancy for Landlord's Use of Property dated September 23, 2021.

The tenant provided a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property dated September 23, 2021. ("the Two Month Notice").

The reason for ending the tenancy within the Two Month Notice is:

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).

The tenant testified that they do not believe the landlord moved into the rental unit after they vacated the premises as they would drive by the rental unit every day and would only see the landlord's vehicle their sporadically. The tenant stated that in June 2022, they saw someone moving into the rental unit.

The landlord testified that they did move into the rental unit in December 2022. The landlord stated that in June 2022, that their brother and wife also moved in, and they have been sharing the accommodations.

The landlord testified that they are not always at home as they go and care for their aging parent, but are there 4 to 7 nights per weeks. Filed in evidence are copies of the utility's invoices for December 2021 and current December 2022.

The tenant response that the landlord could have put the utilities in their name and then send to new tenants for payments. The tenant confirmed that at the end of their tenancy the utilities were in their own name, not the landlords.

Analysis

Section 51 (2) of the Act provides:

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

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. [my emphasis]

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice 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 the case may be, from

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

(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.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property. The Guideline provides that a landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least six months or substitute another reason.

Based on all of the above, the evidence and testimony from the tenant and landlord, and on a balance of probabilities, I find as follows:

The evidence the landlord was that they moved into the premises in December 2022 and are still living there. This is supported by utilities invoices. The evidence of the tenant was that they only saw the landlord's vehicle their sporadically and saw someone moving into the premises in June 2022.

Although the tenant only saw the landlord's car at the premises sporadically, this does not prove the landlord was not occupying the premises and using the premises for their own purpose as the landlord simply may not have been home at the time.

Further, I find this supports the landlord testimony that they were occupying the premises and using it for their own purpose. No other indication that anyone else was occupying the premises or that the premise had been re-rented before June 2022.

Even if I accept the tenant saw someone moving into the rental unit in June 2022, which the landlord indicated it was their brother sharing the accommodation, that would be outside the 6 months period as the landlord was only required to keep the premises for their own use for at least six months. The landlord's obligation would cease on May 31, 2022 and were entitled to rent the premises after that date. I find there is no evidence before me that leads me to believe the rental unit was re-rent between November 27, 2021, and May 31, 2022.

Further, the only documentary evidence that I have before me to consider that relates to after the tenancy has ended, is the landlord's proof of utilities that extend for a period of one year, and a text message between the parties dated June 3, 2022, where the landlord confirms with the tenant they are living.

I have no supporting evidence to contradict the landlord's testimony or evidence that the premises was vacant and unused or re-rented. I find the landlord has met the burden of proof on the balance of probabilities. Therefore, I dismiss the tenant's application.

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 1, 2023

Residential Tenancy Branch