



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 by way of conference call concerning an application made by the tenants seeking monetary compensation for the landlord's failure to comply with the *Residential Tenancy Act* by using the rental unit for the purpose contained in a notice to end the tenancy for the landlord's use of the property.

All 3 tenants and the landlord attended the hearing, and the landlord was accompanied by Legal Counsel as well as an Articled Student, who did not take part in the hearing. The landlord and one of the tenants gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence of the tenants have been provided to the landlord, including late evidence. The landlord has not provided any evidence for this hearing, and the landlord's Legal Counsel takes no issue with respect to the tenant's late evidence. Therefore, all evidence provided by the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord failed to comply with the law by failing to use the rental unit for the purpose contained in a notice to end the tenancy for the landlord's use of the property?

Background and Evidence

The landlord testified that this fixed-term tenancy began on September 1, 2021 and was to revert to a month-to-month tenancy after August 31, 2022, however the tenants

vacated the rental unit on August 31, 2022. Rent in the amount of \$2,500.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,250.00, all of which has been returned to the tenants, and no pet damage deposit was collected. The rental unit is a suite on the 2nd floor of a house, and the lower level is also tenanted. The landlord did not live on the property during the tenancy. A copy of the tenancy agreement has been provided by the tenants for this hearing.

The landlord further testified that the landlord did not issue a notice to end the tenancy to the tenants, nor did the landlord issue a notice of rent increase. The tenants told the landlord that they didn't want to renew the lease, by text message on March 3 and June 29, 2022. The landlord agrees that the text messages provided by the tenants for this hearing are legitimate, but the landlord did not serve any notice to end the tenancy.

The tenant testified that the original lease started in 2019. No move-in or move-out condition inspection reports were completed.

Pursuant to Section 68 (2)(b) of the *Residential Tenancy Act*, the texts are an official notice; they meet 4 of the 5 requirements under the *Act*, and based on the fact that all communication was done by text messages. The 5 requirements are: that it is signed and dated, includes the address of the property; the date the tenancy will end; that the landlord will move in; and be in the approved form. The text messages meet the requirement of Section 52 (a), in that they have a date stamp. The date the lease ended is in the text messages, which also state that the landlord will move in if the tenants refuse to increase the rent by \$700.00 per month. The landlord did not give a notice to end the tenancy in the approved form, however the tenants took it as formal notice and were intimidated by the landlord's actions.

The tenants seek a finding that, based on the fact that there are no inspection reports, and all communication had always been by text, that sets a precedent, and the tenants took that as formal notice. The tenants did not file a dispute to the landlord's notice.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The tenancy lasted over 3 years and was renewed each year willingly, and rent remained at \$2,500.00. If the tenants had not renewed, the term would have reverted to a month-to-month tenancy. The parties exchanged text messages, including arguments, and the tenants said they did not want to remain in the rental unit. That information was given to the landlord at the end of June, 2022, wherein the tenants informed the landlord they would not be staying on. No notice to end the tenancy was issued, and therefore Section 51 does not apply regardless of what the text messages

say. The tenants chose to vacate on August 31, 2022 and the landlord has no obligation.

SUBMISSIONS OF THE TENANTS:

The landlord did not comply with Section 49 (3) or 43 (1) and chose to move into her own house, but did not move in, was not acting in good faith and used Section 49 to end the tenancy.

Analysis

I have read all of the text messages exchanged between the parties, and I agree that the landlord made it very clear that if the tenants do not accept the new rental amount to \$3,200.00 the landlord will move in. The tenant responded, "Okay, demanding that rent from us is against the law, but we will be moving out regardless." The text messages also go on to say that the tenants will not be renewing the lease.

The tenant raised sections of the *Residential Tenancy Act*:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and

(e) when given by a landlord, be in the approved form.

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

The tenants seek a finding that, in the circumstances it is reasonable to amend the landlord's notice, and the tenants knew or should have known that the information that was omitted from the landlord's notice. That section of the *Act* is common in cases particularly where a landlord uses an older version of the form of the Notice.

Because the landlord's text messages are not deemed to be a notice in the approved form, although it may be underhanded, it is not effective under Section 52. The tenants could have disputed the landlord's attempts to require the tenants to move out, but more importantly, the tenants could have refused the increase and refused to move out because the landlord did not serve a notice in the approved form.

I am not satisfied that the tenants are entitled to the compensation under Section 51 (1) or Section 51 (2), and I dismiss the tenants' application without leave to reapply.

Since the tenants have not been successful with the application, the tenants are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby 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: March 20, 2023

Residential Tenancy Branch