



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 Tenants' Application for Dispute Resolution, made on November 22, 2022. The Tenants applied for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 4, 2021 (the Two Month Notice) and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

The Tenants attended the hearing. The Landlord attended the hearing and was assisted by SS, his daughter-in-law. All in attendance provide a solemn affirmation at the beginning of the hearing.

On behalf of the Tenants, JB testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by Canada Post Xpresspost on December 1, 2022. The Landlord acknowledged receipt. Further, on behalf of the Landlord, SS testified that the documentary evidence in response to the application was served on the Tenants by registered mail on February 10, 2023. The Tenants acknowledged receipt. No 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. Are the Tenants entitled to compensation from the Landlords related to the Two Month Notice?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on January 1, 2021 and that the Tenants vacated the rental unit on December 31, 2021. The parties agreed that rent during the tenancy was \$2,200.00 per month. A copy of the tenancy agreement, signed by the Tenants on December 12, 2020, was submitted into evidence.

A copy of the Two Month Notice was submitted into evidence. It was issued on the basis that all the conditions for the sale of the rental unit were satisfied and the purchaser has asked the landlord, in writing, to give the notice because the purchaser or a close family member intend in good faith to occupy the rental unit. A copy of the Buyers Notice to Seller for Vacant Possession document dated November 3, 2021, was submitted into evidence.

The Tenants asserted that the Landlords have not done what was indicated in the Two Month Notice as the basis for ending the tenancy. On behalf of the Tenants, JB submitted that the Landlord did not act in good faith. Specifically, AS testified that the property was vacant for several months. Further, JB testified that a neighbour, S, told the Tenants that on March 25, 2022, the Landlord advised that he was waiting for a prospective renter to view the property. The same day, the Tenants called the Landlord about the rental property and were informed that the unit was available.

In support of the property being vacant, the Tenants submitted photographs of the front of the rental property taken in February and April 2022. In addition, the Tenants submitted screen shots of text messages from S. In a messaged dated February 24, 2022, S stated there was “nobody there ever, no garbage...haven’t seen a soul over there for so long.” In a text message dated March 8, 2022, S states: “Again this week no recycling or garbage and I haven’t seen anyone at all.” However, in a text messaged dated March 15, 2022, S sent the Tenants a photograph of a truck in the driveway of the rental property.

In reply, SS testified that the Two Month Notice was to be effective January 31, 2022. In addition to planning based on this effective date, SS testified that the Landlord gave the Tenants until the effective date to thoroughly clean the house. In response the Tenants testified they gave the seller notice of their decision to vacate the property on December 31, 2021, and assumed the Landlord was advised.

Further, SS testified that she and AB, the Landlord's son, cleaned the house during the month of February 2022. They intended to occupy the house on March 1, 2022. However, the cleaning took additional time because they had other obligations, including employment. In addition, SS testified that marital difficulties, issues at work, anxiety, and depression made the transition difficult for her. In addition, SS testified that AB injured his ankle on March 7, 2022, adding to the challenge of moving into the rental unit on March 1, 2022 as planned. Medical records were submitted in support.

Although SS acknowledged that her move-in date was delayed as a result of these issues, she testified that she and AB moved into the rental property on March 17, 2022 and continued to live there until September 30, 2022. The Landlord's evidence was supported by an affidavit made by AS on January 10, 2023, in which AS states that they helped SS and AB to move into the rental property in February and March 2022. Further, in the affidavit of JA dated January 11, 2023, they state that SS and AB lived in the rental property from mid-March to the end of September 2022, and that they went to the home a couple of times during this period.

The Landlord also submitted photographs of the interior of the rental unit during the period when SS and AB occupied the rental property. These included two photographs taken from the balcony in April 2022, a photograph of the Landlord making repairs to the rental property in June 2022, two photographs depicting the kitchen and living areas in July 2022, two photographs depicting the furnished kitchen and living areas in August 2022, a photograph taken from the balcony in September 2022, and a photograph of someone holding a cat inside the rental property in September 2022.

With respect to the Tenants' evidence regarding a conversation the Landlord had with a neighbour on March 25, 2022, SS acknowledged that the Landlord was concerned about the relationship between SS and AB at that time. Specifically, the Landlord was concerned about the marital and other issues SS and AB were facing. SS testified that the Landlord did not advertise the property for rent but was merely making contingency plans in the event that SS and AB vacated.

Analysis

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

Section 49(5) of the Act allows a landlord to end a tenancy if all the conditions for the sale of the rental unit were satisfied and the purchaser has asked the landlord, in writing, to give the notice because the purchaser or a close family member intend in good faith to occupy the rental unit.

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 unit 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 Landlords bear the onus of proving they did what was stated as the reason for ending the tenancy.

In this case, I find it is more likely than not that the Landlord accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the Two Month Notice, and that SS and AB occupied the rental property for at least six months' duration.

Although I accept that the move-in date was delayed, I find the delay was reasonable considering the marital difficulties, work issues, and mental health issues experienced by SS, and the physical injury sustained by AB. These issues were documented in the Landlord's evidence.

In coming to the above decision, I have placed little weight on the text messages from S, who did not attend the hearing to provide affirmed testimony or make themselves available for cross-examination. I also find that the text messages from S do not substantially contradict the affirmed testimony of SS. That is, SS acknowledged that the anticipated move-in date was delayed for the reasons described above. Any photographs depicting the rental property before March 17, 2022 would understandably show very little activity at the rental property.

In addition, with respect to the evidence regarding a conversation between the Landlord and S on March 25, 2022, I find it is more likely than not that the Landlord was merely considering a contingency plan in the event that SS and AB did not stay in the rental unit. As noted above, I accept that SS and AB did occupy the rental unit from March 17 to September 30, 2022.

Considering the above, I find the Tenants' request for compensation related to the Two Month Notice is dismissed without leave to reapply. As the Tenants have not been successful, I find that the Tenants' request to recover the filing fee is also dismissed without leave to reapply.

Conclusion

The Tenants' 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: March 2, 2023

Residential Tenancy Branch