



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 June 22, 2022 (the Two Month Notice) and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

KM attended the hearing on behalf of the Tenants. The Landlords attended the hearing and were represented by JT, legal counsel. Also in attendance for the Landlords were two witnesses, DP and NP. All those giving testimony during the hearing provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenants, KM testified the Notice of Dispute Resolution Proceeding package was served on the Landlords by registered mail. JT acknowledged receipt on behalf of the Landlords.

On behalf of the Landlords, JT testified that the documentary evidence to be relied upon by the Landlords was served on the Tenants by Xpresspost. KM acknowledged receipt on behalf of the Tenants.

No issues were raised during the hearing with respect to service and receipt of the above documents. 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 ended and the Tenants vacated the rental unit on August 31, 2022. The parties agreed that rent at the end of the tenancy was \$2,160.00 per month.

A copy of the Two Month Notice was submitted into evidence. It was issued on the basis that the rental unit would be occupied by NP, a child of the Landlords. The effective date of the Two Month Notice was August 31, 2022.

KM asserted that the Landlords have not done what was indicated in the Two Month Notice as the basis for ending the tenancy. KM referred to photographs submitted into evidence, taken on October 11 and November 17, 2022. The photographs depict construction work at the rental unit on those dates. KM testified that new appliances such as a bathtub were also observed outside the rental unit.

KM suggested the Landlords ended the tenancy so they could renovate the rental unit. It was not suggested by KM that the Landlords intended to re-rent or sell the rental unit. KM stated that the application is not about the money but that the Tenants want to warn prospective tenants of the Landlords in the future.

In reply, NP acknowledged that he moved into the rental unit on November 1, 2022 and continues to live there. In support, JT referred to a number of documents submitted into evidence by the Landlords. These documents include copies of a Telus invoice, NP's driver's license, a paystub, a T4 form, and a traffic violation. Each of these documents bears NP's name and the address of the rental unit.

In addition, JT referred me to a number of photographs which show NP's belongings in the rental unit including bedroom furniture, clothes, toiletries, art on the walls, dining room furniture, window coverings and rugs, living room furniture, books, etc.

With respect to the reason NP did not move into the rental unit until November 1, 2022, DP testified that the rental unit was in worse condition than anticipated when the Landlords obtained possession of it. Photographs submitted depict dirty walls, broken tile, stained carpet, and dirty or broken kitchen appliances. DP also testified that mold was found behind the bathroom walls, requiring additional work. JT also referred to a photograph of kitchen cabinets which appeared dated and damaged. Additional photographs showing the condition of the rental unit before the tenancy began were also submitted into evidence.

DP acknowledged that the renovations were completed to make it a healthy and suitable place for NP, a student, to reside. The Landlords submitted a number of photographs taken while the renovations were underway and when the work was completed.

At the end of the hearing, JT submitted that there is no evidence to support an improper purpose. Rather, the Landlords took necessary and proper steps to make the rental unit suitable for occupation. JT submitted that the Landlords accomplished the stated purpose for ending the tenancy within a reasonable time when NP moved into the rental unit on November 1, 2022.

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 there is insufficient evidence before me to conclude the Tenants are entitled to the relief sought.

I accept the testimony of the Landlords' witnesses, whom I found to be forthright and plain-spoken. They acknowledged a need for renovations after the Landlords took possession and that some unanticipated work was also required. I accept that the full extent of the renovations was not understood when the Two Month Notice was issued. The Landlords' witnesses also acknowledged there was a brief delay in accomplishing the stated purpose as a result of the renovations. The testimony of the Landlords' witnesses was supported by photographs taken before the tenancy, after the tenancy ended, and during the renovation work.

I also accept the testimony of NP who confirmed he moved into the rental unit on November 1, 2022, and continues to do so. I accept the various pieces of documentary evidence submitted which confirm NP's address at the rental unit.

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 17, 2023

Residential Tenancy Branch