



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 88WEST REALTY in TRUST
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

On July 15, 2022, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant were present at the hearing. At the start of the hearing, I introduced myself and the participants.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before 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 to be Decided.

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The Tenant and Landlord testified that the tenancy began on May 1, 2019, as a one-year fixed term tenancy that continued thereafter on a month-to-month basis. Rent in the amount of \$3,650.00 was due to be paid to the Landlord by the first day of each month.

On December 1, 2021, the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlords Use of Property dated December 1, 2021 ("the Two Month Notice"). The effective date of the Two Month Notice is March 1, 2022.

The reason cited 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. The child of the Landlord or Landlord's spouse.

The Tenant accepted the Two Month Notice and moved out of the rental unit on January 31, 2022. The Tenant provided a copy of the tenancy agreement and a copy of the Two Month Notice.

The Tenant testified that a few months after moving out of the unit she contacted the Landlord's son about a package that was delivered to the rental unit. She stated that the Landlord's son stated that cousin was at the home. She stated that the Landlord's text response led her to believe that the Landlord's son is not occupying the rental unit. She stated that the building concierge told her that the Landlord's nephew was living in the unit. The Tenant provided copies of text messages exchanged between the Tenant and Landlord's son on June 28, 2022.

The Tenant is seeking compensation of \$43,800.00 which is twelve months of rent payable under the tenancy agreement.

In reply, the Landlord's son acknowledged issuing the Two Month Notice to the Tenant for the purpose of him moving into the rental unit. He testified that he moved into the rental unit in mid April 2022, and he let his cousin move into the unit with him. When the tenant texted him he was out of the province. He stated that the Tenant assumed that his cousin was the only occupant of the unit. He stated that the Tenant's claim is based on an assumption. The Landlord provided a copy of a booking confirmation showing departure on June 7, 2022, and a return flight on June 29, 2022.

The Landlord's son provided affidavits from himself and his cousin. In the Landlord's affidavit he states he moved into the rental unit on April 4, 2022, and has been living

there since that time. He provided his drivers licence, bank statements, medical bills, and records in support of his statement.

The affidavit from his cousin, Mr. M.O. provides that the Landlord's son moved into the rental unit on or about April 4, 2022, and that he moved into the unit on May 14, 2022. He stated that he does not pay rent to R.B. but he helps out by paying maintenance costs and hydro bills. Mr. M.O. provided a copy of hydro bills in his name with the address of the rental unit.

The Tenant stated that the hydro bill provided by the Mr. M.O. is dated prior to mid April and that his drivers licence was issued later.

The Landlord's son stated that the documents he provided are dated prior to the Tenants application. He stated that he had lost his licence and had to apply for a new one. He stated that Mr. M.O. connected the hydro in his name prior to moving into the unit.

Analysis

The parties are in agreement that the Landlord issued the Tenants a Two Month Notice to End Tenancy for Landlord's Use of Property. The Tenant accepted the Two Month Notice and moved out.

Section 49(3) of the Act permits a landlord to end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member explains the concept of good faith and vacant possession as follows:

"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement..."

Section 51 (2) of the Act provides that a landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish:

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and*
- (b) the rental unit, except in respect of the purpose specified in section 49(6)(a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

Section 51.1(2) of the Act provides that 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.*

Compensation for Breach of Section 51

After considering the legislation and policy and the testimony and evidence before me, I make the following findings:

The burden of proof rests with the Landlord and I find that the Landlord's son has persuaded me on a balance of probabilities that he moved into the rental unit on April 4, 2022. The Landlord's son provided medical documents dated in May 2022, and June 2022, addressed to himself at the rental address. He provided an emergency health service invoice dated July 29, 2022, addressed to himself at the dispute address. He provided bank documents dated in September and October 2022, addressed to himself at the dispute address.

While I acknowledge that the drivers licence with the dispute address was issued in March 2023, the Landlord's son provided a reasonable explanation that he had lost his licence. In addition, the hydro bills in the name of the Landlords cousin does not establish that the Landlord's son was not living in the unit. Mr. M.O. provided a sworn affidavit that he is responsible for paying the hydro costs.

The Tenant did not provide any written statement or affidavit from the building concierge supporting the Tenant's testimony that the concierge believed that M.O. was occupying

the unit. I find that the Tenant's submission on this conversation is hearsay evidence. I note that the Act does not prevent a landlord from having a roommate.

Since I have found that the Landlord's son moved into the unit on April 4, 2022, and is occupying the unit, it is not necessary for me to consider whether or not there were extenuating circumstances present that stopped the Landlord from accomplishing the purpose of the Notice.

The Tenant's application for money owed or compensation for damage or loss related to the Two Month Notice is dismissed without leave to reapply.

Conclusion

The Tenant was not successful with the application for money owed or compensation for damage or loss related to the Two Month Notice. The Landlord's son has persuaded me on a balance of probabilities that he moved into the rental unit on April 4, 2022.

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: April 26, 2023

Residential Tenancy Branch