



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC

Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on July 28, 2022. They are seeking compensation related to the Landlord ending the tenancy.

The matter proceeded by hearing on April 25, 2023 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

At the outset of the hearing, each party confirmed their receipt of the other’s prepared evidence package. On this assurance, the hearing proceeded as scheduled.

Issue to be Decided

Is the Tenant entitled to compensation for the Two-Month Notice to End Tenancy for Purchaser’s Use of Property (the “Two-Month Notice”), pursuant to s. 51 of the *Act*?

Background and Evidence

Neither party provided a copy of the tenancy agreement in their evidence; however, the Tenant provided a notification of rent increase to \$1,009 that took effect on August 1, 2019. In the hearing, the Tenant confirmed that they originally moved into the rental unit in March 2002.

The Tenant provided a copy of the Two-Month Notice to End Tenancy for Landlord’s Use of Property, signed by the Landlord on May 24, 2021. This set the end-of-tenancy date for August 1, 2021, then edited to indicate October 1, 2021. The Landlord indicated on page 2 of

that document that their close family member – *i.e.*, the child of the landlord or the landlord's spouse – would occupy the rental unit.

In the hearing, the Tenant confirmed that the end-of-tenancy date was extended two additional months to the end of September 2021. The Tenant did not dispute the validity of the Landlord's notice in a formal dispute resolution process. They moved to another municipality that was approximately 35 minutes drive from the rental unit.

In the hearing, the Tenant described how they knew the Landlord did not move into the rental unit until January 2022, when renovations at the rental unit started. They still worked in the same city as that of the rental unit, so they would occasionally drive by, and would observe no activity or signs of occupants, *e.g.*, the snow on the driveway in winter was not walked on.

A former neighbour informed them that the rental unit remained empty after the tenancy ended. They presented photos (in their evidence) that shows renovations underway, and referred to the utility bills that the Landlord provided as evidence showing that there was no water usage in the rental unit immediately after they moved out.

The Tenant provided an affidavit of their former neighbour. This set out the following points:

- they spend the majority of their time in their own home, working from home
- the rental unit “remained vacant for many months”, without “movement around the Property until on or about the second week of December 2021.”
- in January 2021 they observed trucks that belonged to contractors, and large boxes
- they observed new residents move into the rental unit in April 2022.

The Tenant also included an excerpt from a local newspaper, dated March 23, 2022. They highlighted an ad for the rental unit, showing a rent amount of \$3,000 per month. This ad revealed the Landlord's phone number.

In the hearing, the Landlord provided that their spouse moved into the rental unit after the Tenant left. The Landlord's spouse attended the hearing and spoke to the matter directly. They began to perform very specific renovations, with some of them being of a more urgent priority. They presented utility bills that show their spouse's name as the account holder. Their spouse lived by themselves and that accounts for the lower billing amounts present in those accounts.

In a written account, dated October 19, 2022, the Landlord described ending the tenancy because their spouse “wants to move there, not because we want to rent it out to others for

more money”. They added that the house was built in 1974; therefore, the carpet was old, the flooring was noisy. They changed the flooring, bathroom, toilets and the hot water tank “as needed to be livable.”

The Landlord also included a letter from their immediate neighbours, who attested to the Landlord’s spouse moving into the rental unit in October 2021.

The contractor/handyman who completed work in the rental unit also provided a written account dated September 22, 2022. They were hired by the Landlord’s spouse to “do some repairs” concerning leaks in the water system and replacing very old carpet. They refloored one bedroom first “so to have the least impact on [the Landlord’s spouse]”. As work progressed, the scope changed, requiring a plumber. With the water shut off, the Landlord’s spouse stayed elsewhere for a few days. Work progressed on the downstairs bathroom, and work was delayed because of the municipality’s stop work order. Some later work in the kitchen required the Landlord’s spouse to store their plates, toaster, coffee maker, pots and pans etc.” temporarily elsewhere.

The Landlord’s spouse attended the hearing as a witness. They described the work they would do around the home outside. They provided the utility bills in their name that appeared in the Landlord’s evidence. They repeated a summary statement in the hearing, effectively stating ‘what else would I do’ and ‘where else would I go’.

Analysis

Under the *Act* s. 49 a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. The Landlord here issued the Two-Month Notice for this reason.

There is compensation awarded in certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 51:

- (2) Subject to subsection (3), the 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 . . . does not establish that
 - (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 . . . 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.

(3) The director may excuse the landlord . . . from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord. . . from

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

The onus is on the Landlord to prove that they accomplished the purpose for ending the tenancy and that they used the rental unit for its stated purpose for at least 6 months. Failing this, the Landlord must present that extenuating circumstances prevented this.

I find the Landlord has met the burden of proof to show that they accomplished the purpose for ending the tenancy: this was their spouse who occupied the rental unit from October to approximately April 10, 2022 as the Landlord provided for in the hearing.

My decision is based on a balance of probabilities with respect to the evidence either party provided in this matter. I make this decision not on the basis of work completed. The proof of renovations does not lead to the conclusion that the Landlord's spouse did not occupy the rental unit during that time, or the time preceding the start of renovations.

I find the Tenant in their statements in the hearing and the evidence they provided did not offset the Landlord's evidence and testimony. I find the Tenant's submissions to be more a kind of conjecture, rather than actual proof that the Landlord's spouse was not present. In contrast, the Landlord provided direct statements from their spouse in the hearing, a statement of a neighbour who interacted with the Landlord's spouse, and a contractor who described work undertaken with the Landlord's spouse present in the rental unit. I find the contractor's description included distinct details, such as the witness needing to stay elsewhere because of water shut-off, and their everyday kitchenware and dishes being temporarily moved because of cabinet work.

I give less weight to the Tenant's evidence because it relies primarily on the observations of another, *i.e.*, not direct testimony on observations, which in this case must be definitive and abundant in detail. I find the Tenant's contact was not as detailed in their record of observations as was necessary. This would entail an accurate and abundant record of dates, specific observations, and photo evidence where necessary. I find the Tenant did not provide sufficient evidence to build their case. The Tenant also described their own drive-bys of the rental unit; however, this was not abundant in detail so as to give weight to their statements that the rental unit was empty and not lived in.

In sum, the Tenant did not offset the statements of the Landlord in the hearing, and the Landlord's provided evidence. In this, I find the Landlord did accomplish the stated purpose within a reasonable period after the effective date of the notice.

The evidence shows the Landlord rented to new tenants in April 2022. This is more than six months after the end of the tenancy. I find the Landlord used the rental unit for the stated purpose for at least 6 months' duration.

I find the Landlord has shown on a balance of probabilities that they accomplished the purpose for ending the tenancy, for at least 6 months' duration.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 27, 2023

Residential Tenancy Branch