



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with a tenant's monetary claim against the landlord for compensation payable where a landlord ends the tenancy for landlord's use and does not use the rental unit for the stated reason.

Both of the tenants and the landlord appeared and were affirmed. The landlord also had his son present at the hearing, and a translator.

I confirmed the landlord received the tenant's hearing documents and evidence via registered mail. I also confirmed the tenants received the landlord's evidence via registered mail. Neither party took issue with service of materials upon them and I admitted the parties' respective materials into evidence for consideration in making this decision.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I note that the landlord also uploaded a document entitled "counterclaim". The landlord may have created the document, in part, in response to the tenant's claim and I have reviewed the content of the document with a view to capturing the landlord's responses. However, the landlord did not have an Application for Dispute Resolution before me and I did not hear or make any findings as to whether the landlord is entitled to compensation from the tenants. If the landlord intends to seek compensation from the tenants, he would be required to first file and serve a Landlord's Application for Dispute Resolution.

Issue(s) to be Decided

1. Are the tenants entitled to compensation equivalent to 12 months of rent from the landlord, as claimed?
2. Award of the filing fee.

Background and Evidence

Under an oral tenancy agreement, the tenancy started in 2011. Rent at the end of the tenancy was \$880.00 payable on the first day of every month. The tenancy ended on December 31, 2021. The tenants rented the upper floor of a house. The tenant's mother rented the basement suite under a separate tenancy agreement with the landlord.

The parties provided consistent testimony as to how the tenancy came to an end. In September 2021 the landlord came to see the tenants at the rental unit and orally notified the tenants that they would have to vacate the rental unit by December 2021 because his son was going to move in to the rental unit. A written notice to end tenancy was not provided by the landlord. The landlord explained that he did not issue a written notice because the tenants were long term tenants and they treated each other "like family". In his written submission, the landlord described how the parties had known each other for years and they had a good relationship. The tenants indicated in their written submission that the landlord had described to them in September 2021 how there had been disagreements in the landlord's home and that the landlord's son needed his own privacy. It was undisputed that the tenants accepted the landlord's oral notice to end tenancy. The tenants were compensated the equivalent of one month's rent by withholding rent for December 2021 and they moved out of the rental unit at the end of December 2021.

The tenants filed this application after finding their unit had been re-rented rather than occupied by the landlord's son. It was also undisputed that the landlord re-rented the rental unit to a new tenant in May 2022 for much more rent.

Landlord's position

The landlord stated that the tenants did not take issue with having to move out and they accepted his reason for wanting to end the tenancy. The landlord stated he gave them nearly four months of advance notice and one free month of rent.

The landlord testified that after the tenancy ended, the landlord cleaned up the rental unit and asked his son to move into it. The landlord's son stayed in the rental unit for approximately one week but then informed the landlord that he could not stay there because he was having difficulty breathing and there was a bad smell. The landlord likened the smell to that of a dead animal even though the landlord had cleaned the unit. The landlord then replaced the carpeting, cabinets and repainted the unit in an effort to de-odorize the rental unit over a period of three months. The son returned to the rental unit but after a few days the son complained that he still smelled something unpleasant and the son stopped staying at the rental unit. The landlord found dead rats and a rat nest under a cabinet in the basement suite which the landlord cleaned up and placed traps. The landlord also found the kitchen and bathroom cabinets in the basement suite were damaged by moisture and mould and that smell could be smelled upstairs. Given these conditions, the landlord's son's asthma precluded him from living in the rental unit. The landlord decided to rent out the rental unit to new tenants at the beginning of May 2022 by not telling the new tenants about the rat problem but they subsequently complained of it. The landlord also submitted in his written submission that the rental unit could be occupied by someone who does not have asthma.

The landlord proceeded to repair the basement suite and the landlord's son moved into the basement suite in late July 2022 or early August 2022.

In support of his position, the landlord provided copies of several receipts for purchases of building supplies. The landlord also provided several photographs of the basement suite where there was evidence of rats, water damage and mould. The landlord also provided a copy of a doctor's notes made on January 26, 2012 and February 22, 2012.

Tenant's position

The tenants acknowledge the house was old and in need of renovations but not because of damage or dirt caused by the tenants. The tenants also disagreed with the landlord's assertion that the house smelled badly. The tenants submitted that they confronted the landlord in July 2022 in an effort to settle this matter and the landlord told them that his son decided not to live in the rental unit because it was "too old".

The tenants went to the rental unit in May 2022 to check for mail and found a new tenant living in the rental unit. The new tenant told the tenant that she is paying rent of \$2400.00 per month and that the basement suite was still vacant.

The tenants had a letter written by a neighbour who has lived next door to the rental unit for 15 years. The neighbour wrote on June 25, 2022 that after the tenants moved out, the upper and lower floors of the house were under renovation. Then new tenants moved into the upper suite in May 2022 and the lower unit was still vacant.

The tenants were of the position they, plus their three children and two dogs, were wrongfully evicted by the landlord so that he could significantly increase the rent by telling them a falsehood that his son would be moving into the rental unit.

Analysis

With respect to the tenants' claim against the landlord, I provide the following findings and reasons.

Section 49 provides that a tenancy may be ended where the landlord or close family member of the landlord intends to occupy the rental unit. A child of a landlord meets the definition of "close family member". Section 49 further provides that the landlord is to serve the tenant a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice"), in the approved form, with at least two months of advance notice. A tenant in receipt of a Two Month Notice is entitled to compensation equivalent to one month's rent for receiving a Two Month Notice under section 51(1) of the Act.

In this case, the tenants were not served with Two Month Notice in the approved form. Nevertheless, the Act also provides that a landlord and tenant cannot avoid the Act. Section 5 of the Act provides:

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

The landlord communicated to the tenants in his oral notice given to the tenants in September 2021 that he needed the tenants to move out by December 31, 2021 so that his son could move into the rental unit. The landlord gave the tenants at least two months of advance notice and the tenants obtained the last month of tenancy free of paying rent. I find the landlord's reason for ending the tenancy is consistent with a permissible reason under section 49 of the Act, the landlord gave the tenants the amount of advance notice required under section 49 of the Act, and the compensation given to the tenants (one free month of rent) is also consistent with the compensation payable to a tenant where a tenant receives a notice to end tenancy under section 49 of the Act. Also of consideration is that the landlord also failed to prepare a written

tenancy agreement, yet the lack of a written tenancy agreement does not mean the landlord or the tenants can avoid the rights and responsibilities of the Act.

Therefore, I find the tenancy ended under section 49 of the Act despite the lack of a written notice to end tenancy.

Where a tenancy is ended under section 49 of the Act, the landlord is obligated to pay compensation to the tenant, as provided under section 51 of the Act.

The tenants have already received the compensation payable under section 51(1) of the Act, which was the equivalent of one month's rent, by withholding rent for December 2021.

The application before me is consistent with the additional compensation equivalent to 12 months of rent that is provided under section 51(2) of the Act. Section 51(2) provides as follows:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) **the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.**

[My emphasis added]

The spirit of the Act is to preserve existing tenancies. As such, the Act provides very specific and limited circumstances when a landlord may end a tenancy. The Act also provides very serious consequences for landlords who state they are ending the tenancy for landlord's use of property but then does not fulfil the stated purpose after the tenancy ends within a reasonable amount of time or for a minimum of six months. The consequence for the landlord is the requirement to pay the tenant additional compensation under section 51(2) and it is a significant financial consequence intended to create a real deterrence to ending a tenancy for false reasons and/or ulterior motives.

In this case, the landlord submitted that his son moved into the rental unit for very brief periods of time, lasting only a few days, on two occasions and then the unit was re-rented to a new tenant starting in early May 2022. Clearly, the landlord did not use the rental unit for the stated purpose for at least six months and I find the tenants entitled to compensation equivalent to 12 months of rent under section 51(2) of the Act, or \$10560.00 [\$880.00 per months x 12 months].

Subsection 51(3) provides a mechanism for the Director, as delegated to an Arbitrator, to excuse the landlord from having to pay the compensation provided under section 51(2) if “extenuating circumstances” prevented the landlord from accomplishing the stated purpose within a reasonable amount of time after the tenancy ended or using the rental unit for the stated purpose for at least six months.

Section 51(3) provides as follows:

(3) **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 applicable, 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, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.**

[My emphasis added]

The landlord did not specifically state that “extenuating circumstance” prevented his son from residing in the rental unit for at least six months; however, the landlord did point to the condition of the basement suite and the smell in the rental unit, and the landlord’s son having asthma, as being the reason his son did not continue to reside in the rental unit for at least six months and I proceed to consider whether this is an extenuating circumstance.

The landlord did point to the condition of the basement suite, having rats and water damage and mould, as being the reason the landlord’s son could not reside in the upper unit despite the landlord cleaning and renovating the upper unit. I do see photographs

of water damage, including mould, and what appears to be rats and rat droppings and I accept the unopposed evidence that these things were present in the basement suite. However, the landlord specially stated in his written submission that the upper suite could be occupied by someone without asthma. Thus, I find the landlord's son alleged medical condition of asthma becomes a very relevant issue to prove. I was provided the doctor's notes from 2012. In the second entry, dated February 22, 2012, the doctor's diagnosis appears to read the landlord's son had "postnasal drip" and "not sure he had asthma". Given what I see in the doctor's note from 10 years prior, and the lack of receipts for medications for asthma in recent years, I find I am not persuaded that the landlord's son has asthma or that asthma prevented the landlord's son from residing in the rental unit for at least six months. Therefore, it is my opinion that an "extenuating circumstance" did not prevent the landlord from using the rental unit for the stated reason and I do not excuse the landlord from having to pay the tenants the compensation they are entitled to receive under section 51(2) of the Act.

Since the tenants were successful in this application, I further award the tenants recovery of the \$100.00 filing fee from the landlord.

Provided to the tenants with this decision is a Monetary Order in the sum of \$10660.00 to enforce against the landlord.

Conclusion

The tenants are successful in this application and are provided a Monetary Order in the sum of \$10660.00 to enforce against the landlord.

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: May 16, 2023

Residential Tenancy Branch