



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Residential Tenancy Act* (the “Act”) for compensation because my tenancy ended as a result of a notice to end tenancy, and the landlord has not complied with the Act, or used the rental unit for the stated purpose, and to recover the cost of the filing fee.

In this matter the hearing was scheduled as a blended hearing. The tenant attended in person at a Residential Tenancy Branch Office and the landlord’s appeared by telephone.

Both parties appeared and gave affirmed testimony.

The tenant confirmed they received the landlords’ evidence as directed by the interim decision.

Issues to Decide

Is the tenant entitled to compensation that equals 12 times the monthly rent?

Background and Evidence

The tenancy began on February 1, 2021. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant. The tenancy ended on March 1, 2022.

The parties agreed that the tenant did not receive a 2 Month Notice for Landlord's Use of Property in the proper form. The tenant received a letter from the landlords.

The tenant testified that they rented the basement unit in the landlords' home and the landlord's lived in the upper portion of the house.

The tenant testified that they received a letter from the landlord's giving them four months to vacate the rental unit because they were ending the tenancy for landlord's use of property. However, they vacated earlier.

The landlords testified that before they rented the basement suite to the tenant it was always used as their art studio, and from time to time they may have rented a room to a university student on short term; however, they had not done that for years and they had no intentions of renting the space out.

The landlords testified that they were asked by their daughter if they could help the tenant because they were told that the tenant was just getting out of a difficult relationship and due to that they decided to remove their art studio and rent to the tenant at a below market rent as they just wanted enough to cover the basic bills and help the tenant out.

The landlords testified after the tenant vacated, they did use the rental unit for their own purpose as they turned it back into their art studio, which is what it was used for before the tenant took possession.

The landlords testified that they also had to use the rental unit to access the premises due to their health and mobility issues and have spent four months of the last year in the hospital. The landlords stated that they made some minor alteration to the rental unit by widening the pathway and doors to accommodate a walker or a wheelchair.

The landlords testified that they also installed a chairlift to allow them to access the upper level of the home and are currently bed ridden. The landlords stated at some point they also may have to move their bed into the lower area, to accommodate home support and services.

The landlord's testified that they have not re-rent the rental unit. They are using it for their own purposes.

The tenant responded that the rent was low, and they had wanted to stay there for a long period of time and because rental accommodations have increased during the year they have been priced out of the market and put them in a hardship position.

The tenant testified that this after the landlords attempted to increase the rent, three weeks later they received a letter to end the tenancy. The tenant stated that it was not used for the stated purpose as the landlord was using the rental unit as their art studio.

The tenant responded that the male landlord was in poor health; however, that has been an ongoing issue for many years. The tenant stated that the Final Report, from Vancouver Island Health Authority date June 1, 2022, indicates the rental unit is being used as the landlord's art studio, that it also may be rented out soon. The tenant stated that the health report provided by the landlord is date 7 months after their tenancy had ended.

Analysis

Section 51(2) of the Act states that the landlord must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord have not taken steps within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy and used for that purpose for at least six months.

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation.

The tenant did not receive a notice to end the tenancy in the proper form and there was no requirement for the tenant to vacate. However, clearly the letter to end the tenancy was for landlord use of property and the tenant accepted the notice to end tenancy and vacated the rental unit.

In this case, landlords live in the upper portion of the house and rented the basement area to the tenant. The rental unit was not rented before the tenant took possession as it was used as the landlord's art studio. The landlords only rented to the tenant at the request of their daughter.

Both parties agreed the landlords have used the rental unit as their art studio after the tenancy ended. I find the landlords were entitled to reclaim the rental unit as part of their living accommodation and use it for their own purpose, this would include their art studio.

Further, alterations were made to the rental unit by widening doorways, pathways to accommodate the aging landlord's health and mobility issues. I find this is reasonable as the evidence support the male landlord has ongoing health and mobility issues. I find it was within the landlords' rights to make any alterations needed to the premises to accommodate their access and mobility issues.

Simply because the landlord has had ongoing health issues for an extended period of time, does not take away the landlords' rights to ensure their medical needs and/or disabilities are accommodated as they progress.

I find there is no evidence, whatsoever, that leads me to believe, that the landlords have re-rent the rental unit.

While the Final Report from Vancouver Island Health Authority dated June 1, 2022, indicates that some of the area may be rented out in the future, this simply is speculating by the writer. Further, I find this is not relevant because this is seven months after the tenancy had ended and the landlords are entitled to rent a portion of the space out any time after the six month period should they decided to do so.

Based on the above, I find the landlords have met their obligations under the Act, as I am satisfied that the landlords are using the rental unit for their own use and have been doing so for at least six months. Therefore, I dismiss the tenant's application without leave to reapply. The tenant is not entitled to recover the cost of the filing fee.

Conclusion

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: June 14, 2023

Residential Tenancy Branch