



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

On September 23, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant and both Landlords attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

All parties confirmed service of documents, and there were no issues concerning service. As such, all parties’ evidence was accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 1, 2018, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on April 30, 2022, based on the Notice. Rent was established at an amount of \$1,248.45 per month and was due on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$250.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

All parties also agreed that the Tenant was served with the Notice in February 2022 sometime. The reasons the Landlords checked off on the Notice were because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." As well, the Landlords checked off the box indicating that "The landlord or the landlord's spouse" would specifically be the persons occupying the rental unit. They also checked off the box that "The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit." However, Landlord J.A. advised that this was checked off in error as they were not a family corporation. The effective end date of the tenancy was noted as April 30, 2022, on the Notice.

Landlord S.U. advised that he and J.A. have experienced marital difficulties, and as a result, the Notice was served with the intention for him to move into the rental unit. He stated that he moved into the rental unit immediately after the effective date of the Notice. He also testified that the upstairs tenants were evicted as well so that their daughters could move in and live there. He stated that he had been diagnosed with a

rare form of cancer, that he could not work because of it, and that he has difficulty using stairs. Therefore, the basement rental unit was ideal for his needs. He acknowledged that he accrued an enormous amount of debt because of his inability to work, so he converted the upstairs into an Airbnb in July 2022 to generate income. He stated that he put the hydro, cable, and utilities into his name, that he has been living in the rental unit ever since, and that he has not rented it out. He referenced the documentary evidence to support his testimony regarding his health diagnosis, his marital situation, and all his other submissions. As well, he noted that the skydiving picture that the Tenant referenced in her evidence was from 2021 when he attempted to reconcile with J.A.

J.A. testified that S.U. moved into the rental unit on May 2, 2022, that the upstairs has two flights of stairs that S.U. cannot manage, and that the rental unit was required based on his health and mobility issues.

The Tenant questioned whether S.U. moved into the upstairs, and both Landlords reiterated that S.U. lived in and occupied the rental unit. The Tenant advised that she went to pick up her mail on occasion, and she observed a person come out of the rental unit a couple of times. As well, she stated that there would be no activity when she would pick up her mail. In addition, she testified that her brother had not seen any people living in the rental unit. She did not reference any documentary evidence to support her position that S.U. did not move into the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing this Notice, I am satisfied that it is a valid Notice.

With respect to the Tenant's claim for twelve-months' compensation owed to them as the Landlords did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was dated February 1, 2022, and Section 51 of the *Act*

changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

51 (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.

(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 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.

I find it important to note that, in this type of Application, the Landlords have the burden to provide sufficient evidence over and above their testimony to establish that the rental unit was used for the stated purpose, for at least six months, within a reasonable period of time after the effective date of the Notice. I also note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

I note that the Landlords advised that it was their good faith intention to have S.U. move

into the rental unit. However, the good faith requirement ended once the Notice was accepted, and the tenancy ended. What I have to consider now is whether the Landlords followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective end date of the Notice.

When reviewing the totality of the evidence and testimony, I have before me solemnly affirmed testimony from the Landlords advising that S.U. moved into the rental unit immediately after the effective date of the Notice and has occupied that space for at least six months. Furthermore, I have documentary evidence that supports this testimony. On the other hand, I have the Tenant's speculation that S.U. did not move in, with very little documentary evidence to support her submissions that he did not occupy the rental unit pursuant to the Notice. Based on a balance of probabilities, I prefer the Landlords' evidence on the whole. As such, I am satisfied that the Tenant is not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*.

As the Tenant was not successful in this claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution 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: July 12, 2023

Residential Tenancy Branch