



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

Under section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Tenant's April 11, 2023, application to the Residential Tenancy Branch for:

- (i) compensation because the tenancy was ended as a result of a Two Month Notice to End Tenancy, and the landlord has not used the rental unit for the stated purpose under section 51 of the Act; and
- (ii) authorization to recover the cost of the filing fee under section 72 of the Act.

Issues

- 1. Is the Tenant entitled to compensation in the amount of \$16,800.00?
- 2. Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began February 15, 2021, and ended on May 31, 2021. Rent was \$1,400.00 due on the first day of the month. There is a copy of the written tenancy agreement in evidence.

The Tenant submitted as evidence a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), which had an effective date of June 30, 2021. The reason stated on the Notice for ending the tenancy was:

- the rental unit will be occupied by the landlord or the landlord's close family member: the landlord or the landlord's spouse.

The Landlords affirmed that:

- the rental unit is located in the basement suite while the Landlords lived in the main unit of the house.
- the Tenant moved out on May 31, 2021. Landlord MM occupied the rental unit as soon as the Tenant vacated.
- Landlord MM wanted to use the rental unit because Landlord MM needed space away from Landlord MM's spouse, Landlord WA. Landlord MM needed this space because Landlord WA has been diagnosed with Alzheimer's disease and gets mood swings. Landlord MM would go down to the rental unit whenever Landlord WA became difficult to control.
- on June 15, 2021, the Landlords hired a caregiver to look after Landlord WA. The caregiver moved into the main unit of the house. To make room for the caregiver, Landlord MM moved into the rental unit partially.
- after Landlord MM moved downstairs, the Landlords realized that they were losing money on their mortgage and needed to start listing the rental unit on Airbnb.
- between June 1, 2021, and December 31, 2021, there were about 80 days of Airbnb bookings for rental unit. Landlord MM occupied the rental unit on the days there were no Airbnb bookings during this period. When the rental unit was booked, Landlord MM sometimes slept in the car.
- the Landlords have not submitted any documentary evidence to show that the Landlords have been occupying the rental unit.

The Tenant affirmed that:

- the Tenant received the Notice on April 28, 2021, and vacated on May 31, 2021.
- on April 25, 2021, the Landlords informed the Tenant that they want to end the tenancy because (i) the Tenant has used obscene language when speaking with the Landlords; (ii) the Landlords want to use the rental unit for their B&B business; and (iii) the Landlords want to house a caregiver for Landlord WA. The

Tenant submitted as evidence an email from the Landlords dated April 25, 2021, confirming this.

Analysis

Section 51(2) of the Act states that if a tenant is given a notice to end tenancy under section 49 of the Act, a landlord or purchaser if applicable, must pay the tenant an amount that is equal to 12 times the monthly rent if:

- 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
- the rental unit is not used for that stated purpose for at least six months' duration.

In addition, according to Policy Guideline 50, the onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the Act or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months.

Policy Guideline 2A also adds that, since there is a separate provision under section 49 of the Act to end a tenancy for non-residential use, the implication is that “occupy” means to occupy for a residential purpose. The result is that a landlord can end a tenancy under sections 49(3), (4) or (5) of the Act if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlords have failed to show that the Landlords accomplished the stated purpose for ending the tenancy. I find this because, on the Notice, the reason provided by the Landlords for ending the tenancy was: the rental unit will be occupied by the landlord or the landlord's close family member: the landlord or the landlord's spouse.

According to Policy Guideline 2A, occupy means to occupy for a residential purpose since there is a separate provision under section 49 of the Act to end a tenancy for non-residential use. Based on the evidence of the parties, I find that the Landlords' predominant purpose for taking back the rental unit was to rent out the unit as an Airbnb rather than to use for residential purposes. I find this because the Landlords' evidence was that Landlord MM only occupied the rental unit on the days there were no Airbnb bookings and sometimes even had to sleep in the car when the rental unit was booked. The fact that Landlord MM only occupied the rental unit when there were no bookings

suggest that income generation was the main purpose of the rental unit, especially since Landlord MM would rather sleep in the car than cancel an Airbnb booking. In addition, the Landlords also have not submitted any documentary evidence to show that the Landlords have been occupying the rental unit.

Accordingly, I find the Tenant is entitled to a Monetary Order for compensation for the Landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act, in the amount of \$16,800.00.

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The application is granted. The Tenant is awarded a monetary order in the amount of \$16,900.00.

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 18, 2023

Residential Tenancy Branch