



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on November 21, 2022 seeking compensation for the end of the tenancy, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 11, 2023.

Both the Tenant and their former Landlords (the “Landlord”) attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset of the hearing, both parties confirmed they received the documentary evidence of the other.

Issues to be Decided

- Is the Tenant entitled to monetary compensation for the Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”), pursuant to s. 51 of the *Act*?
- Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement in their evidence. This shows the tenancy started on September 1, 2020, for the rent amount monthly of \$1,400. This increased to \$1,436.50 on December 1, 2022 as noted on the agreement. On the Application, the Tenant provided the rent amount of \$1,400 monthly.

As set out in their written response to the Tenant's Application, the Landlord described the rental unit property as a "residential built triplex." There are two 2-bedroom units on the main level, and a one 2-bedroom unit on the second floor. The Landlord themselves occupied the upstairs unit; the Tenant rented one of the main-level units under the tenancy agreement.

The Landlord issued the Two-Month Notice on May 5, 2021. This set the end-of-tenancy date for October 1, 2021. In the hearing, the Tenant provided that the final end-of-tenancy date, entailing a final inspection in the rental unit, was October 1. Page 2 of that document has the Landlord's indication that "the father or mother of the landlord or the landlord's spouse" would occupy the rental unit.

In the hearing, the Tenant set out that they moved to another province; however, they had a call from their former neighbours that the Landlord and/or their parents did not move into the rental unit. Their "friends kept an eye on the rental unit and walked past every day." Further, their friend paid a visit to the rental unit to confirm that the Landlord's parents did not move into the rental unit, as set out that friend's written statement ("I . . . never once saw a moving truck or anyone moving into [the rental unit].")

A second written statement from another former neighbour is in the Tenant's evidence. This sets out that this former neighbour visited to the rental unit on March 18, 2022 and spoke to the occupants, who "indicated they were living in [the rental unit] and that they were the owners of the building." Further: "From what I understand this runs contrary to their declaration that the parents of one of the couple would be occupying [the rental unit]."

The Tenant also presented a Facebook ad showing the rental unit's availability for rent. As stated in the hearing, this was "6 months to the day after [the end of tenancy]". The ad as it appears in the Tenant's evidence is dated March 28, 2022.

To counter this evidence and the direct statements of the Tenant in the hearing, the Landlord presented that they prepared things in the rental unit for their parents' move-in; this included painting, some "slight renovations" and the addition of furniture. The Landlord themselves then decided to move into that particular rental unit, which is one of three at the rental unit property.

While their intention was for their parents to move into that particular rental unit, after relocating from elsewhere, throughout the summer the health of both of the Landlord's grandparents declined, so the Landlord's parents decided "it was not practical to move." The Landlord submits this was an extenuating circumstance in the form of a health challenge the family was facing. As set out in their written statement: "These unexpected family

circumstances necessitated a change in plans and prevented [the Landlord's parents] from moving [into the rental unit] as originally intended."

In their written statement, the Landlord states they moved into the rental unit themselves, to "complete the painting and upgrades and still have a place available [for their parents] when they were able to come." They note in particular that they did not rent the rental unit to other new tenants; the Landlord simply moved from their own upstairs unit to the downstairs unit (*i.e.*, the Tenant's former rental unit).

Regarding the Facebook ad, the Landlord stated this ad was for a different rental unit at the rental unit property – this was the Landlord's own former unit they lived in, refurbished and "this [ad] was 6 months later for a different unit, not [the Tenant's former rental unit]." The Landlord pointed to a message from a friend who helped them move from their own former unit they lived in, to the rental unit. In their evidence, the Landlord provided rental agreements for their own former unit they lived in, to link back to the ad to show they did not seek new tenants for the rental unit.

In response to what they heard from the Landlord in the hearing, and the evidence that the Landlord provided, the Tenant queried when the Landlord occupied the former rental unit after the Tenant moved out. The Landlord stated it was within a calendar month. The Tenant posited that the Landlord changed their minds on their own choice of rental unit prior to the tenancy ending.

The Tenant's Application, excluding the Application filing fee, is for \$16,800. This is based on the rent amount of \$1,400 per month.

In the hearing, the Tenant provided a summary statement: "We were evicted for [the Landlord's] parents who ultimately did not come . . . then the Landlord rented out after a unit shuffle . . . this was not the reason stated for the eviction."

Analysis

The *Act* s. 49 allows for a landlord to end a tenancy if they or a close family member intends in good faith to occupy the rental unit. Precisely, s. 49(3) is worded thus:

A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

There is compensation awarded in the situation 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
 - (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose of 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 . . . 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, 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.

In this situation, I find the Landlord ultimately did accomplish the purpose for which they ended the tenancy. Basically, this was for the Landlord's own use of the rental unit. I find it immaterial whether it was the Landlord or the Landlord's close family member: the Landlord ended the tenancy under s. 49 of the Act. There was nothing along the way to show demonstrably that the Landlord did not accomplish this purpose, being "if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit." I find the terms of "landlord" or "a close family member of the landlord" are exchangeable for the purpose of the Landlord's own use of the rental unit.

I find the Landlord did not post an ad for the rental unit seeking to re-rent it again in short order. The exact number of the rental unit is not on the Facebook ad that the Tenant presented, and I accept the Landlord's explanation that this was their own previous unit that they rented to other new tenants.

The Tenant raised the point that the Landlord had a "unit shuffle" in mind before the tenancy ended. I find that focuses more on the Landlord's ability to re-rent their own previous unit to new renters; this is immaterial with regard to the rental unit in question, and as above I maintain that it does not matter whether it is the landlord or their family member who occupied the rental unit. The Landlord accomplished the purpose for which they ended the tenancy.

Even if I find the Landlord shuffled units as the Tenant posits, I find extenuating circumstances were in place, as attested to by the Landlord, in that their close family members' plan to move into the rental unit was ended with other family members' health issues.

Either way, I find there is no compensation to the Tenant in this situation.

I excuse the Landlord from paying the monetary amount outlined in s. 51(2). I dismiss the Tenant's Application in whole, without leave to reapply. Because the Tenant was not successful in this Application, I grant no reimbursement of the Application filing fee to the Tenant.

Conclusion

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

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 31, 2023

Residential Tenancy Branch