



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking monetary compensation for the landlords' failure to comply with the *Residential Tenancy Act*, or use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property, and to recover the filing fee from the landlords for the cost of the application.

The tenant and both landlords attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the landlords have complied with the *Act*, and used the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property and for at least 6 months duration?

Background and Evidence

The first landlord (WM) testified that this fixed-term tenancy began on October 1, 2018 and reverted to a month-to-month tenancy after September 30, 2019. The landlord believes the tenant moved out of the rental unit on August 2, 2022. Rent in the amount of \$2,500.00 was payable on the 1st day of each month. The rental unit is a house which contains a 1 bedroom suite in the lower level. The house was rented as 1 unit, and the landlord believes the lower level was sublet to someone else. A property manager took care of it, and the landlord does not know if there are any rental arrears

or a security deposit or pet damage deposit. A copy of the tenancy agreement has been provided by the tenant for this hearing.

The landlord further testified that the tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property. A copy of the Notice has been provided for this hearing, and it is dated May 9, 2022 and contains an effective date of vacancy of July 31, 2022. The reason for issuing it states: 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), specifying the landlord or the landlord's spouse.

The landlords were at the rental unit when the hand-over took place. The landlord arrived back from Edmonton, where the landlord had gone to get more items, and the landlords still occupy the house. The landlords took possession when the tenant moved out on August 2, 2022 and the landlords still live there.

The second landlord (NM) testified that rent was \$2,500.00, which was increased to \$2,650.00 after there had been a pause with COVID. The property manager told the landlords what the increase should be, which was never increased over the legal amount.

The landlords moved in their possessions when they took possession on August 2, 2022. They moved in things, such as furniture and clothing, so they could use the lower level of the house. The landlords had seen a builder, considering renovations, but when the builder had a chance to have a look around the house, there were issues that the landlords were not aware of, so the landlords stayed downstairs while the upper level was being worked on. As they started, there were a lot more things that had to be done to bring it up to new code standards. As a result, the landlords had to occupy the lower suite much longer than anticipated. The work is still not 100% finished, but the landlords have lived in the upper level since April, 2023. The lower suite is not rented; the landlords consider it to be part of their house.

The landlords have also provided an undated letter from the contractor, which states that the owners moved into the suite in the home. Renovations started December 2022 – January 2023, which is hoped to be finished in March, 2023.

The tenant testified that the landlords provided the tenant with compensation in the equivalent of 1 month's rent.

The tenant had an intuition that the Notice to end the tenancy was part of a "renewal," and subsequently did not see any evidence of any occupation of any section of

the house, or believe that the landlords were living in the house. None of the neighbours saw them, no vehicles were going to the rental home well into January, 2023, or lights on. The tenant believes the tenant was deprived of the house on a pretense that cannot be supported by evidence. The landlords have provided several receipts, as requested by the tenant to illustrate that they are residents of the City, and the documents that the landlords have provided fall short of that. In fact, only 67 of them were actual purchases over a period in excess of 6 months. The tenant believes the landlords are misleading this tribunal.

The tenant was in contact with several neighbours who live opposite and a few houses up the road who regularly walk up the street and would have seen vehicles in the driveway. They would also have seen the landlord, who is a gardener, in the garden. Also, the woman who lives opposite with a window overlooking the rental home would have seen lights on.

SUBMISSIONS OF THE LANDLORDS:

It is surprising to the landlords that they're not noticeable to neighbours. There have not been cars in the driveway, leaving it vacant for contractors' vehicles. There is public parking and a beach close by, and lots of cars park there. The landlords assume neighbours didn't know which cars belonged to the landlords. The landlord did not spend time in the garden until about May because she didn't have time, and has a gardener. The landlords didn't sit for a long time necessarily in the living room and had black-out type blinds. People 2 houses away didn't recognize the landlords, however an older lady who lives across the street was met by the landlords many times, and she told the landlords that she saw the tenant there. The landlords did not think it was necessary to send 600 or 700 receipts to the tenant.

SUBMISSIONS OF THE TENANT:

There was no intention to move in anywhere close to August, 2022. The landlords' response also has an additional discrepancy, which states that the landlords arrived on August 14. Personal possessions coming to the house suggest that the landlords had not packed up or had a truck to move into the rental home. The story about suddenly discovering that renovations urgently needed to be done, sounds like a wives' tale when considering dates.

Analysis

Where a tenant makes such an application, the onus is on the landlords to establish that the reason for ending the tenancy has been accomplished and that the landlords have

resided in the rental home commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration.

In this case, the effective date of the Notice is July 31, 2022. I accept the evidence from the contractor, and the testimony of the landlords, that the landlords have remained in the rental unit, either upstairs or downstairs, since the tenancy ended.

I have reviewed all of the evidentiary material, and I am satisfied that the landlords have moved into the rental home as required by law, and I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety 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: August 24, 2023

Residential Tenancy Branch