



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on April 5, 2024 concerning an application made by the tenant seeking monetary compensation for the landlord's failure to act in good faith 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 landlord for the cost of the application.

The tenant attended the hearing with the tenant's spouse and a witness who was assisted by an interpreter. The tenant's spouse and the witness each gave affirmed testimony, and the interpreter was affirmed to well and truly interpret the hearing from the English language to the witness' Native language and from the witness' Native language to the English language to the best of the interpreter's skill and ability.

However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenant's spouse testified that the landlord was served with the Notice of Dispute Resolution Proceeding and other required documents and evidence by registered mail on December 5, 2023 and has provided a Canada Post Registered Domestic Customer Receipt and cash register receipt containing that date. I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

Has the landlord acted in good faith by using the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property?

Background and Evidence

The tenant's spouse testified that this fixed-term tenancy began on May 1, 2020 and was to revert to a month-to-month tenancy after April 30, 2025. Rent in the amount of

\$3,580.00 was originally payable on the first day of each month, however the tenants agreed to a rental increase to \$3,680.00 per month. There are no rental arrears, and no security deposit or pet damage deposit were paid to the landlord. A copy of the tenancy agreement has been provided by the tenant for this hearing.

The tenant's spouse also testified that at the end of December, 2021 the landlord served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice) by posting it to the door of the rental unit, and a copy of the first of 4 pages has been provided for this hearing. It is dated December 23, 2022 and contains an effective date of vacancy of February 28, 2022, and the tenant's spouse testified that the dates were all wrong. The tenant's spouse also testified that the reason for issuing the Notice states that the rental unit will be occupied by the landlord or the landlord's spouse, but no one moved in. The tenants didn't dispute the Notice and the landlord was successful in obtaining an order of possession effective on 2 days, which was very difficult for the tenants. A copy of an order of possession dated June 22, 2022 has been provided for this hearing.

The tenant's spouse noticed a for sale sign in October, 2022 and made an appointment to see the house on November 20, 2022. An agent showed the house, and it was empty. The tenant's witness also viewed the house. The tenant's spouse stopped by this morning and no one lives there.

The tenant has also provided a photograph of 2 envelopes addressed to the landlord at the rental home which have been marked by Canada Post as "moved" and "vacant."

The tenant's witness testified that he met the tenant's spouse on November 20, 2022 when he viewed the rental house with his spouse. Nothing was in the house; it was empty. The witness did not purchase the house because there was too much work to finish.

Analysis

Where a tenant makes an application for compensation for the landlord's failure to comply with the *Residential Tenancy Act* or accomplish the stated purpose for ending the tenancy, the onus is on the landlord to establish that the landlord acted in good faith. If the landlord fails to establish that, the landlord must compensate the tenants 12 times the monthly rent. The *Act* specifically states:

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 unless the landlord or purchaser, as applicable, establishes that both of the following conditions are met:

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice;
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, I accept the undisputed testimony of the tenant's spouse that the reason for ending the tenancy was for the landlord or the landlord's spouse to occupy the rental unit.

I also accept the undisputed testimony of the tenant's spouse that the dates on the Two Month Notice to End Tenancy For Landlord's Use of Property are incorrect; it shows that the effective date of vacancy is months before the date the landlord signed it. The tenant's spouse also testified that the Notice was received at the end of December, 2021, which I also accept, considering that the order of possession is dated June 22, 2022.

I also find that the landlord has failed to establish that the landlord has acted in good faith or used the rental unit for the purpose contained in the Notice, given that the tenant's spouse and witness testified that they viewed the home when it was for sale in November, 2022 and the house was vacant at that time. The registered mail returned shows that the home was vacant as well.

Therefore, I find that the landlord must compensate the tenant 12 times the monthly rent of \$3,680.00, or \$44,160.00. Since the tenant has been successful with the application, the tenant is also entitled to recover the \$100.00 filing fee from the landlord.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$44,260.00. The landlord must be served with the order, which may be enforced.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$44,260.00.

This order is final and binding and may be enforced.

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: April 05, 2024

Residential Tenancy Branch