



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking monetary compensation from the landlords for the landlords' failure to 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.

Both tenants and both landlords attended the hearing, and one of the tenants and one of the landlords gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that the tenants have provided all evidence to the landlords, but the landlords have not provided any evidence to the tenants, indicating that they didn't know they were required to. Any evidence that a party wishes to rely on must be provided to the other party even if they already have a copy because it is important for both parties to know what is before me. Further, the Notice of Dispute Resolution Proceeding states that: "Respondents must provide all applicants with copies of any evidence submitted to the Residential Tenancy Branch." Since the landlords have not done so, I decline to consider any of the landlords' evidence. All evidence of the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the rental unit was used for the purpose stated in the Two Month Notice to End Tenancy For Landlord's Use of Property commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration, or do extenuating circumstances exist that prevented that?

Background and Evidence

The landlord testified that this month-to-month tenancy began in mid-March, 2021. Rent in the amount of \$2,400.00 was originally payable on the 1st day of each month, however rent was reduced to \$1,900.00 per month because the tenants couldn't afford it. The tenants are in arrears of rent the sum of \$450.00 for November, 2022 and \$1,900.00 for each of the months of December, 2022 and January, 2023, for a total of \$4,250.00. The tenants paid a security deposit to the landlords, but not the amount required. A copy of the tenancy agreement has not been provided for this hearing.

The landlord further testified that on December 31, 2022 the tenants were served 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. A copy of 2 pages of the 4-page Notice has been provided by the tenants for this hearing, and it is dated December 31, 2022 and contains an effective date of vacancy of February 28, 2023. 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 or the father or mother of the landlord or landlord's spouse, and marked "one or the other" in handwriting. The landlords didn't know which would be more appropriate for the landlord's parents to live in, the rental unit or the landlords' home.

On February 28, 2023 the tenants said they couldn't vacate and would have storage available by March 10, 2023 and the landlords gave an extension to March 10, 2023 but the tenants wouldn't leave or pay to have their belongings stored in the rental unit, but chose to keep the items in the rental unit.

The landlord's parents arrived at the community on February 9, 2023 and waited to move into the rental unit. By March 20, when the tenants had not yet vacated, the landlords went back to Alberta and returned again in April, 2023, but the tenants' belongings were still inside the rental unit.

On May 9, 2023 the landlord's father was referred to a dementia clinic, but they returned again at the end of May, 2023 with the intention of moving into the rental unit. The landlords stored the tenants' personal belongings in the rental unit as per the law, and the earliest that the landlord's parents could occupy the rental unit would have been September 1, 2023. The items included furniture, clothing, household décor, kitchen items, personal effects, multiple beds, tables and cabinets. It is not clear to the landlord what items they did take.

The landlords also served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for the unpaid rent for November and December, 2022. Another 10 Day Notice to End

Tenancy for Unpaid Rent or Utilities was served for the unpaid rent for January, 2023. The tenants filed a dispute after the effective date of the Two Month Notice to End Tenancy For Landlord's Use of Property. Hearings were scheduled but the tenants didn't attend.

Because the landlord's parents could not move into the rental unit, based on illness and the tenants' failure to fully move out, no one has occupied it.

The tenant testified that the tenancy began on April 15, 2021 and the tenants paid a security deposit to the landlords in the amount of \$700.00 on April 15, 2021. Rent was \$2,150.00, but the tenants negotiated rent of \$1,900.00.

On April 9, 2023 the tenant texted the landlord as the tenants were slowly moving out. The landlords had changed the locks to the rental unit and the tenants had no access, but received no response from the landlord. The tenants left their belongings in the rental unit and bought new things. The tenant told the landlord that it was illegal, and that the tenants went there and needed the items and that the tenants would file a complaint, but didn't do so. The landlords didn't have an order of possession. The tenant told the landlords that the tenants would no longer be dealing with the landlords.

The rental unit has sat empty. The tenants claim \$19,000.00 from the landlords, which is 12 times the monthly rent, less \$3,800.00 owed to the landlords for rent.

Neither party made any closing submissions.

Analysis

The *Residential Tenancy Act* puts the onus on the landlord to establish that the landlord accomplished the stated purpose for ending the tenancy within a reasonable time after the effective date of the Notice and for at least 6 months duration. If the landlord fails to do so, the landlord must pay compensation to the tenant equivalent of 12 times the monthly rent. However, the law also states that I may excuse the landlord from paying the compensation if extenuating circumstances prevented that.

In this case, the tenants did not dispute the Two Month Notice to End Tenancy For Landlord's Use of Property. The law states that if a tenant fails to dispute a notice to end a tenancy, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date contained in the Notice. Therefore, the tenant's messaging that it was an illegal eviction is not true; the landlords had a full right to take possession on February 28, 2023 without obtaining an order of possession first.

The tenants didn't remove a multitude of items from the rental unit, and I find that to be extenuating circumstances that prevented the landlords from accomplishing the purpose for ending the tenancy.

As a result, I dismiss the tenants' application in its entirety without leave to reapply.

Conclusion

For the reasons set out above, the tenants' 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: April 09, 2024

Residential Tenancy Branch