



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was originally scheduled to convene at 1:30 p.m. on July 15, 2024 concerning an application made by the tenants seeking monetary compensation for the landlords' failure to accomplish the stated purpose for ending the tenancy with 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.

Due to issues respecting evidence, I adjourned the hearing to September 18, 2024 with the consent of the parties, and my Interim Decision was provided to the parties after the first scheduled date.

On September 18, 2024 both tenants attended the hearing with Legal Counsel, and both landlords also attended. Both landlords and one of the tenants gave affirmed testimony and the landlords called two witnesses who also gave affirmed testimony. The parties, or Legal Counsel were given the opportunity to question each other and the witnesses 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 accomplished the stated purpose for ending the tenancy with a Two Month Notice to End Tenancy For Landlord's Use of Property within a reasonable time after the effective date of vacancy?
- Should the tenants recover the filing fee from the landlords?

Background and Evidence

The first landlord (DB) testified that this fixed-term tenancy began on December 1, 2013 and reverted to a month-to-month tenancy after July 31, 2015, which ultimately ended on November 30, 2023. Rent in the amount of \$2,750.00 was payable on the 1st day of each month, which was increased over time to \$3,308.24 per month, and there are no rental arrears. On December 1, 2013 the landlords collected a security deposit from the tenants in the amount of \$1,375.00, and no pet damage deposit was collected. The rental unit is a house, or single family dwelling, and the landlords did not live on the property during the tenancy. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on August 3, 2024 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 the Notice has been provided for this hearing, and it is dated August 3, 2023 and contains an effective date of vacancy of October 31, 2023, for the landlord or the landlord's spouse to occupy the rental unit. The tenants were given 2 months of free rent as compensation.

The landlords moved in, having received the property back from the tenants at the end of November, 2023, which is when the landlords moved in. The landlords had to do a lot of work to do to make it habitable to the landlords' standards. The landlords had to patch all holes in walls, some of which had hard crusted glue that the landlords couldn't get rid of, and had to smooth it out. The living room had art work on the walls with glue, and the landlords patched it to even out the surface. Two holes were patched by the tenants in a "Mickey Mouse" fashion, so the landlords removed the holes leading to the outside patio from the living room as well as a hole in the exercise room. It had been divided into 2 rooms and traces of that were visible at the end of the tenancy, and lines on the ceiling showed the division. The landlords also had to fix a glass door which had been damaged by the tenants, and the landlords had to do a lot of work in the kitchen. Also, the toilet was plugged and didn't drain properly, which the landlord considers maintenance, but was a significant amount of work. The landlord's spouse repainted, because the landlord developed an allergic reaction to dust, went to the hospital and contracted COVID.

Ultimately, when completed, after the landlord's problems with allergies and COVID, the landlords moved into the rental home on January 1, 2024, and continue to live there. Previously the landlords had resided in a home across the street from the rental unit, which is presently occupied by the landlords' 2 adult sons, and the landlords always wanted to live in the rental unit and told the tenants that.

The landlords have provided photographs which were taken on various dates commencing January 13, 2024. The landlords park across the street or in the driveway, or on the street.

Garbage and recycle bins have to be out by 7:00 a.m. and the landlords' son does it. Sometimes the landlords don't have enough garbage and the landlords leave it to their son to decide how to deal with it, and sometimes takes it across the street. Large boxes for purchases were taken to the landfill right away.

The second landlord (ZB) testified that the landlords have lived in the rental unit for a long time, and will stay until they cannot live there any longer.

The landlords' first witness (SB) is the landlords' son who testified that garbage pickup is at 6:00 or 7:00 a.m., or could be earlier. The witness takes garbage out for the landlords on Thursdays because the landlords are elderly and the witness' father leaves at 6:00 a.m. each day and the witness' mother has been ill. Both houses don't create much garbage, and the witness' father is a recycling person. If there's no need to take the garbage out, they don't.

The witness also testified that the cul-de-sac has no parking and the witness' mother doesn't like to park in the driveway because it is steep and a tenant's car had gone down and hit another car, and there's still damage to the garage. The witness has no issue with the landlords parking in the witness' driveway.

The landlords' second witness (SZ) testified that around the beginning of January the landlords moved in, and the witness had dinner in January with the landlords. The witness never sees the husband landlord in the mornings, but always sees the landlord wife and the witness says hello when dropping off a child to daycare, and always sees the landlord husband returning and parking the car. The witness sees them quite often. The landlords have always lived there full time.

The witness lives next to the rental property, and would usually go to the property across the street, but now only to the rental property. The landlord wife was looking for furniture, and said she could sleep much better and bought a new mattress.

The rental property is a big house, and starting around Christmas, the landlords slowly moved in. In December, 2023 the landlords showed the house to the witness, and the witness saw holes and stuff that needed to be fixed up, and the landlord husband was trying to paint. The witness went to Ontario and when the witness returned at the beginning of January, 2024, he said he had problems but didn't wear a mask, and ended up in hospital.

The tenant testified that there were 2 months during which no garbage was taken out, which seemed strange. There are inconsistencies about when the landlords purchased, that they lived there for awhile, but said there were too many stairs for them. Now they have moved across the street, and the notice to end the tenancy was given right after the parties had a dispute about the landlords not fixing the stove for 18 months. The tenants disputed the notice to end the tenancy, and the result was a cancellation of the Notice. Then the landlords gave another Notice, which was disputed, then the first Decision went to Judicial Review. The story was that the landlords were going to move in the first time right away. They were aggressive and spiteful because the tenants served the landlords. The landlord wife has done bullying things.

The rental home is a 7-split level, and the tenant does not believe the landlords were living there. There was no garbage, and the car was parked on the other side, and the tenants do not believe the landlords' intention. Numerous photographs have also been provided by the tenants.

Analysis

The *Residential Tenancy Act* requires a landlord to accomplish the stated purpose for ending a tenancy with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice) within a reasonable time after the effective date of the Notice. Where a tenant makes an application for monetary compensation for the landlord's failure to do so, the onus is on the landlord to establish that the landlord accomplished that stated purpose.

In this case, I have reviewed the Notice, which is dated August 3, 2023 and contains an effective date of vacancy of October 31, 2023 and that the reason for issuing it was for the landlords to occupy the rental unit, however the tenants moved out at the end of November, 2023.

I have reviewed all of the evidence, and take particular note of the photographs provided by the landlords showing that the rental unit is occupied. I also accept the undisputed testimony of the landlord that there were damages left in the rental unit and required a significant amount of work and painting.

The landlord and one of the landlords' witnesses testified that the landlords moved into the rental unit starting around Christmas time and took some time to fully move in. I also accept the testimony of the witness that the witness sees the landlords quite often. The witness also testified that the landlords have always lived there full time.

Considering the evidence and the testimony of the parties and the witnesses, I am satisfied that the landlords have accomplished the stated purpose for ending the tenancy within a reasonable time after the tenants vacated.

The tenants' application is dismissed. Since the tenants have not been successful with the application, the tenants are not entitled to recover the filing fee from the landlords.

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: September 24, 2024

Residential Tenancy Branch