



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord notes that the Tenant submitted evidence late and asks that this evidence not be accepted.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure provides that if the arbitrator decides to accept late evidence the other party will be given an opportunity to review the evidence through an adjournment request. Noting that the late evidence was a single and brief document, the Landlord was given an opportunity to seek an adjournment should the Landlord require additional time to review or respond to the document. The Landlord agreed that they had sufficiently reviewed the document and declined to request an adjournment. Given that the Landlord has reviewed the late evidence, that the evidence is a brief document and that the Landlord does not require an adjournment to respond to this late evidence I accept the evidence.

The Tenant confirms that the dispute unit address is the lower unit and not the upper unit as indicated on its application.

Issue(s) to be Decided

Did extenuating circumstances prevent the Landlord or a close family member of the Landlord from occupying the unit as set out in a notice to end tenancy for landlord's use?

Background and Evidence

The following are agreed facts: The tenancy under written agreement of the lower unit in a house started on October 1, 2015. The Landlord lived in the upper unit in the same house. Rent of \$1,100.00 was payable on the first day of each month during the last year of the tenancy. The security deposit has been dealt with. On October 1, 2019 the Landlord gave the Tenant a two month notice to end tenancy for landlord's use (the "Notice"). The effective date of the Notice was December 31, 2019. The reason stated on the Notice is that the Landlord or a close family member of the Landlord will occupy the unit. The Tenant moved out of the unit on December 31, 2019. The Tenant was not informed at any time of who would be moving into the unit. The unit was listed for sale on January 28, 2020 and was subsequently sold.

The Landlord states that its mother-in-law was to move into the unit. The Landlord states that the mother-in-law was living alone in another province after her husband passed away in 2018 and that the family was concerned with her being alone. The Landlord states that plans for the move were started in discussions with the mother-in-law in May 2018 and were finalized in September 2019 through another family member. The Landlord provides evidence of flights to the mother-in-law's area of residence. The Landlord states that they started making preparations for the mother-in-law's move between September and December 2019. The Landlord provides copies of receipts for paint supplies variously dated during fall 2019 and a receipt for a storage locker dated December 31, 2019. The Landlord states that the mother-in-law was to move into the

unit on February 1, 2020. The Landlord states that the mother-in-law passed away unexpectedly on January 1, 2020. The Landlord provides letters from family members of the planning for the mother-in-law's move and documentary evidence of the mother-in-law's death. The Landlord states that as a result of the passing of the mother-in-law the Landlord and his wife decided to move their retirement to an earlier date, place the unit for sale and relocate to their recreational properties in another part of the province. The Landlord states that he retired from his casual employment on January 2, 2020 with no notice as his wife was grieving and needed him. The Landlord states that his wife retired at the same time. The Landlord states that after the mother-in-law's death they stressed for three weeks about what to do.

The Witness, the Landlord's wife, states that the final decision for her mother to move into the unit was made in September 2019 after some reluctance by the mother. The Witness states that her mother had good mobility and that there were no concerns with her living in a basement unit in the house. The Witness states that all the family members live in this province and not in the province where her mother lived. The Witness states that in October 2019, after the Tenant was given the Notice, she gave her retirement notice for work. The Witness states that she had planned on being retired by the time her mother moved into the unit in February 2020 however after her mother's death the Witness moved her retirement to an earlier date and never returned to her employment after the holiday season.

The Landlord states that after selling the unit they moved to their recreational property that they had previously used only 2 - 3 time each year over the past 20 years. The Landlord states that at the time of their planning for the mother-in-law to move in with them, they did not expect to move to their recreational property for several more years as there was no house there and only a 5th wheel. The Landlord states that they moved to the recreational property in April 2020 and immediately started the construction of a house and garage. The Witness states that the garage was completed in April 2020 and that the house construction should be completed by October or November 2020. The

Landlord states that permits to build the garage were obtained “maybe” in January 2020. The Witness states that their belongings were in their home at the dispute address until April 2020.

The Tenant provides a document labelled in evidence as the retirement announcement dated December 13, 2019. This document, written by the head of the school where the Witness was employed, notes the Witness’s retirement and their move to the area where the Landlord’s recreational property is located. The Tenant questions why the Landlord provided no medical evidence that the mother-in-law was in good enough health to move. The Tenant refers to the mother-in-law’s residence as being in assisted living. The Tenant argues that the mother-in-law was in an assisted living facility and that there is no evidence that the mother-in-law was capable of making the move or that there was communication with the facility about supporting the mother-in-law’s move. The Tenant argues that on the whole of the Landlord’s evidence this was all a plan and that there were no extenuating circumstances. The Landlord states that the mother-in-law was in an independent living residence. The Landlord confirms that there is no evidence of the mother-in-law’s planned move other than from family members and close friends. The Landlord states that the facility that the mother-in-law was living in was not given any notice of leaving since the planned departure date was not until February 1, 2020.

Analysis

Section 51(2) of the Act provides that 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 if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for 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.

Based on undisputed evidence that the unit was sold and not occupied by the Landlord or a close family member of the Landlord I find that the Tenant has substantiated that the unit was not used for, nor were steps take to accomplish, the stated purpose on the Notice.

Section 51(3) of the Act provides that the director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, 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.

The Tenant's evidence from the Witness's employer tends to support that as late as December 2019 the Landlord and the Witness did not intend to occupy the house containing the unit. While this also tends to contradict the Landlord's evidence that the plans were for the Landlord to remain in the house with the mother-in-law residing in the unit below, the Tenant provides no other evidence to contradict the planned move of the mother-in-law into the unit. I consider that the Landlord has provided more reliable evidence from family members and close friends that the mother-in-law was to move into the unit to live with the Landlord. Given the undisputed evidence of the mother-in-law's death and the evidence of the Landlord's subsequent planning as a result of that death, I find that extenuating circumstances prevented the occupation of the unit by the Landlord or a close family member of the Landlord. The Landlord is excused from paying the 12-month penalty and I dismiss the Tenant's claim for compensation. As the

Tenant's claim has not been successful, I dismiss the claim for recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 19, 2020

Residential Tenancy Branch