



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 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 Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness provided testimony under oath.

Preliminary Matter

The Parties agree that the name of the Landlord should be amended to remove a repeated last name entered in error by the Tenant. Given this agreement the application is amended to set out the correct name of the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on February 1, 2014 and ended on September 19, 2020. Rent of \$2,200.00 was payable on the first day of each month. The security deposit has been dealt with. The Landlord served the Tenant with a two-month notice to end tenancy for landlord’s use dated June 30, 2020 (the “Notice”). The Notice sets out an effective date of September 30, 2020. The reason set out on the Notice is that the father or mother of the Landlord or the

Landlord's spouse will occupy the unit. A letter was provided with the Notice indicates that the Landlord's mother and extended family will be moving to Canada will occupy the unit.

The Tenant states that the unit has been vacant until at least February 15, 2021 and that the Landlord's son then moved into the unit. The Tenant provides witness letters from neighbours. The Tenant states that while the unit was empty some minor maintenance was being done. The Tenant states that the Landlord's evidence of power usage does not show the amount expected for a lived-in house. The Tenant states that there was also no weekly garbage removal. The Tenant states that the Landlord's evidence indicates that they are trying to put the house in the son's name. The Landlord provided a letter from a bank manager dated December 10, 2020 that indicates that the Landlord discussed the possibility of the son being added as a co-owner of the unit about a year earlier. This letter also indicates that between March and April 2020 discussions were held about preparing for the mother's return to Canada.

The Landlord states that the mother left Canada for another country in November 2019 with the return planned for February 1, 2020. The Landlord submits that the mother was not able to return to Canada due to travel restriction and airline cancellation despite having made multiple attempts between Feb and Jun 2020. The Landlord provides a letter from a travel agency and states that the mother could not return as planned as this other country stopped flights out of the country due to covid. The Landlord states that around June 2020 they thought that the mother could be able to return sometime in July, August or September 2020. The Landlord states that prior to issuing the Notice they tried to book the flight but was told that if it was cancelled, they would not get a refund. The Landlord states that for this reason no flight was booked. The Landlord states that they served the Notice anyway as they knew that the mother, a Canadian citizen, had to return for medications by November 2019 she only had 6 month's worth of medications. The Landlord states that in the fall of 2020 there were no longer any travel restrictions however the mother then became ill mid October 2020 leading to the

heart surgery. The Landlord provides medical documentation and utility bills. The Landlord states that the hydro bill shows increased usage for December 2020

The Landlord states that at the same time they served the Notice it was decided that their son, who was living with the Landlord, would also move into the unit with their mother. The Landlord states that when they discovered that the mother could not occupy the unit, they decided it was a good time for the son to move into the unit. The Landlord states that the son started to move into the unit in mid November 2020 and was fully moved into the unit in early December 2020. The Landlord states that the option to set out that a child of the Landlord would move into the unit was not selected as it was not clear if more than one of the options provided were available.

The Tenant states that the Landlord has not provided evidence of any flight restrictions and only cancellations. The Tenant states that there were no flight restrictions from the other country into Canada between February and June 2020. The Tenant states that there was no mention of the son moving into the unit until after the Tenant's evidence was given to the Landlord. The Tenant states that prior to this the Landlord only spoke about their mother and extended family. The Tenant states that they knew the Landlord would have to do some work to the unit, so they moved out early to accommodate this work.

The Landlord's son (the "Witness") stated that he moved into and occupied the unit full time in October 2020. The Witness states that his grandmother, the Landlord's mother, was still out of country at the time and although the original intention was for his grandmother to return in September 2020 this was not possible due to the grandmother having eye surgery. The Witness states that he does not know his grandmother well but knows she had eye surgery. The Witness states that it thinks there was something else but does not recall. The Witness states that the decision to move into the unit was made at the end of September 2020 when they realized his grandmother was not coming. The Witness states that they did not want to leave the unit empty due to risks

with a vacant house. The Witness states that he will reside in the unit indefinitely and has no plans to own the unit. The Witness states that he is still waiting for the grandmother to return and when she does, she will occupy the unit. The Witness states that he may still reside in the unit at this time. The Witness states that he resided in the basement part of the unit and that renovations were being done to the upper unit. The Witness was asked by the Landlord if the Witness recalled a conversation they had in late November 2020 about the grandmother's health. The Witness responded that he thinks the conversation was about the grandmother's eye surgery.

The Tenant states that their hydro usage for the period October, November and December 2019 shows evidence of normal usage with about 5 occupants. The Tenant states that they were rented and occupied the entire house. The Tenant states that the unit was left immaculate and that the Tenants had repainted and did the flooring. The Tenant states that the Landlord's receipts provided as evidence are only in relation to items for maintenance and not for a month-long renovation or "repurposing" of the unit.

The Landlord states that the state of the unit at move-out is only the Tenant's opinion. The Landlord states that it wanted to repaint the walls and cabinets that were left with scuffs. The Landlord states that the invoices include paint supplies and baseboard materials.

The Landlord states that between February and June 2020 they tried several times to book a return flight. The Landlord states that after this and during the summer they did not try to book a flight because the house would not be made suitable for the mother's occupancy until the end of October 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.

It is undisputed that the Notice sets out an effective date of September 30, 2020. As the Tenant made its application on November 24, 2020 I consider that the Tenant has not disputed that the rental unit was not used for its stated purpose for at least 6 months duration and that the only issue for the determination of the Tenant's compensation claim is whether steps were taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy.

It is undisputed that the Notice only sets out that the mother was to occupy the unit. Although the Landlord's evidence is that the reason for the Notice was also occupation by the son and that this selection was not included as the Landlord did not know whether two choices could be made, given the Witness evidence I find that the son was not being considered as an occupant for the unit at the time the Notice was issued and that it therefore cannot be implied that the Notice also included the son's occupation of the unit.

Given the Tenant's evidence that they knew the Landlord wanted to do some work to the unit prior to its occupation and given the Landlord's evidence that it expected this work to be done by the end of October 2020, I find that steps to occupy the unit could reasonably have been expected to be undertaken in November 2020. It is undisputed that the mother did not occupy the unit since the effective date of the Notice. For these

reasons I find that the Tenant has substantiated that steps were not taken within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy

Section 51(3(a)) 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 accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy. While the Landlord and its Witness gave inconsistent evidence of the type of medical issue faced by the Landlord's mother in the fall of 2020, given the medically supported documentation of the mother's health condition, I find that the mother faced serious health issues in November 2020 that, together with the undisputed evidence of the existence of covid, prevented the mother from returning to occupy the unit. In my opinion these are extenuating circumstances that then prevented the Landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy. The Landlord is therefore excused from paying the Tenant the compensation claimed.

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

Conclusion

The Tenant's 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: March 26, 2021

Residential Tenancy Branch