



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 as a result of the Tenant's Application for Dispute Resolution, made on September 11, 2021. The Tenant applied for compensation from the Landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

The Tenant attended the hearing and was represented by DP, his lawyer. RR attended the hearing on behalf of the Landlords. Both the Tenant and RR provided a solemn affirmation at the beginning of the hearing.

As a preliminary matter, BB is the Executor of the estate of CR, who died in August 2019. A Title Search Print submitted into evidence confirms the authority of BB. Accordingly, pursuant to section 64(3) of the Act and in accordance with Policy Guideline #43, I amend the Tenant's application to reflect the legal authority of BB.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on each of the Landlords by registered mail on September 25, 2021. A Canada Post registered mail receipt including the date and time of purchase and the tracking numbers was submitted in support. The Tenant testified that the package was received by BB. The Tenant testified that the package to RR was returned but that it was subsequently sent via email. RR acknowledged receipt of the package via email.

The Landlords submitted documentary evidence in response to the application. RR testified that documentary evidence was served on the Tenant by regular mail on March 3, 2022. A date-stamped receipt confirming the date of mailing was submitted into evidence. The Tenant acknowledged receipt.

No further issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. I find the above documents were sufficiently served for the purposes of the Act, pursuant to section 71 of the Act.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution proceedings. All in attendance confirmed the hearing was not being recorded.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to compensation from the Landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence


The Tenant described the rental property as a 2-story house with 4-bedrooms, 1-1/2 bathrooms, an unfinished basement, and one kitchen. RR agreed with this description.


The Tenant testified that in early 2019, while working as a property manager, a colleague who was representing the owners of the property approached him and advised that the owners were looking for a way to continue using the rental property as a vacation home while simultaneously avoiding the speculation and vacancy tax.

The Tenant testified after some communications with CR, a tenancy began on May 1, 2019. At all material times, monthly rent was \$1,100.00.

A copy of the signed agreement between the parties was submitted into evidence. It includes the following term at paragraph 45:

A) Tenant agrees to permit owner (Chris) and his family shared use of the space in perpetuity for common areas and 3 bedrooms
B) Tenant agrees to maintain home and property in good condition


LANDLORD'S INITIALS


TENANT'S INITIALS

The Tenant confirmed that, during the tenancy, the landlord named in the tenancy agreement issued a Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 27, 2019 (the Two Month Notice). A copy of the Two Month Notice was submitted into evidence.

The Tenant testified that he vacated the rental unit on or about November 5, 2019, in accordance with the Two Month Notice.

The Tenant seeks compensation under section 51(2) of the Act. The Tenant testified the tenancy ended pursuant to the Two Month Notice which was issued on the basis that the rental unit would be occupied the Landlords or the Landlords' close family member.

Tenant testified that he still lives in the neighbourhood and has observed that the house remains vacant. He has also noticed that neighbours with whom he developed a relationship have resumed parking their car in the driveway.

On examination by his lawyer, the Tenant also testified that he lived in an "ideal...irreplaceable" condominium before moving to the rental property. He testified that he never would have left the condominium for what became a six-month tenancy.

In reply, RR acknowledged that neither of the owners moved into the property. RR lives in California and wishes to use the property only when he is in Canada. He acknowledged that his regular use of the property was delayed by Covid-19 restrictions. However, with the lifting of restrictions, he intends to visit four times per year.

RR also testified there was no contract between the corporate landlord named in the tenancy agreement and himself.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 4 of the Act confirms that the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation. The Act does not require the owner to reside in the accommodation.

In this case, the parties agreed there was only one kitchen. Further, the tenancy agreement includes a term that grants the owners “shared use of the space in perpetuity for common areas and 3 bedrooms”.

Whether or not the owners ever stayed at the property during the Tenant’s occupation of the property, I find that the parties intended for the owners to share the common areas, including kitchen facilities, with the Tenant during their sojourns to Canada.

As a result, pursuant to section 4 of the Act, I find the Act does not apply to the rental arrangement between the Tenant and the Landlords.

The Tenant’s application is dismissed, without leave to reapply.

Conclusion

The Tenant’s application is dismissed, 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 25, 2022

Residential Tenancy Branch