



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was scheduled to convene on February 21, 2023 concerning an application made by the tenants seeking monetary compensation for the landlord's 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 landlord for the cost of the application.

One of the named tenants attended the hearing with an Advocate, and the landlord attended with Legal Counsel. At the commencement of the hearing the landlord applied to adjourn the hearing and join the tenants' application to be heard with an application made by the landlord which is scheduled to be heard in October, 2023. I denied the request to adjourn, considering that the landlord's application was made in January, 2023 while the tenant's application before me was filed in August, 2022.

The hearing did not conclude within the time scheduled and I adjourned the hearing to continue at 1:30 p.m. on March 8, 2023. My Interim Decision was provided to the parties.

The parties attended on March 8, 2023 and the hearing continued. The landlord and the tenant each gave affirmed testimony, and the landlord called 3 witnesses who also gave affirmed testimony. The parties, or their representatives were given the opportunity to question each other and to give submissions.

No Issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that extenuating circumstances exist that prevented the landlord from accomplishing the purpose for ending the tenancy for landlord's use of property?

Background and Evidence

The landlord testified that this month-to-month tenancy began on July 13, 2018 and the tenants vacated the rental unit at the end of March, 2022. Rent in the amount of \$2,200.00 was payable on the 1st day of each month, however no rent was charged to the tenants for the first partial month of the tenancy. There are no rental arrears. On July 13, 2018 the landlord collected a security deposit from the tenants in the amount of \$1,100.00 as well as a pet damage deposit in the amount of \$1,100.00, both of which are still held in trust by the landlord. The rental unit is a 3 bedroom dwelling with a separate unit which is also owned by the landlord and tenanted.

No move-in or move-out condition inspection reports were completed, however the tenants told the landlord to keep the deposits due to damages at the end of the tenancy, but not in writing, and the landlord has not been provided with a forwarding address of the tenants in writing.

On or about December 26, 2021 the landlord served the tenants with a Two Month Notice to End Tenancy For Landlord's Use of Property by email and personally. A copy has been provided for this hearing and it is dated December 24, 2021 and contains an effective date of vacancy of February 28, 2022. 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 child of the landlord or landlord's spouse. The tenants did not dispute it. The landlord testified that the landlord's son was to move into the rental unit.

The landlord had the property listed for sale from March 22 to June 14, 2021 and again from August 25 to September 13, 2021. The landlord listed it again in September, 2022 because the landlord's autistic son was not able to move in due to the condition of the rental unit left by the tenants. The plan was to have both of the landlord's sons occupy both units. One of the landlord's sons is autistic and would move into the rental unit, and the other son would occupy the other unit, but he was accepted into University and

did not move into that unit. That acceptance was well after the notice to end the tenancy was given to the tenant.

The landlord had to take care of damages first, but after seeing the rental unit, the damages grossed out the landlord's autistic son and he lost his nerve. He was excited to move in April but it was not ready to move into until July, at which point the other son was accepted into university and the autistic son wouldn't move in without his brother, even though the landlord had made arrangements with the boys' father to stay with him for a year, and the landlord lives close by. He said he would not move in, so the landlord put the rental property back on the market and it sold in October, 2022. It was sold at a loss; the landlord didn't make money on the sale considering the renovations that were done.

The landlord's son (PE) suffers from separation anxiety, depression and ADHD, and autism, which is the most debilitating condition, and he hasn't been in school for 4 years, not able to leave home, very introverted and has a lot of special needs and challenges. He had 2 years of tough times, 3 different medications, and puberty causes more challenges in autism, such as obsession with self-harm. The landlord has had to remove knives, scissors and other sharp objects and work with therapists to get him through that, so the landlord did not push him into moving into the rental unit. Medical evidence has also been provided for this hearing.

It was the landlord's autistic son (PE) who brought up the possibility of moving into the rental unit, was excited about it and of his brother moving into the other unit. The landlord and son (PE) spoke with the psychologist and the boy's father about it, and everyone saw it as a huge and amazing opportunity for him. The landlord explained to him that the tenants had asked for another month to vacate and the landlord thought that was the right thing to do. He was okay with that but it was very tough for him when the other son moved, and he saw the mess inside and appliances outside of the rental unit. Change is difficult and his stress level increased when the landlord told him that the tenants were going to stay for another month. The landlord introduced him to contractors who did renovations, and explained that it would look like the other unit, as well as working with a therapist and furnishing it for him as a 2 bedroom unit with a gaming room. The landlord decorated his room, and tried to get him to move in.

The landlord also testified that a cleaner was called to clean windows who told the landlord about a hoarding situation. The landlord had not been inside but knew all floors were extremely damaged; the realtor saw that. All appliances were also damaged, and there was so much damage that everything needed to be done, and the

landlord wouldn't have renovated if it wasn't necessary. The house was a late 1970s home and was renovated just prior to the landlord purchasing it. The carpet, flooring, fridge, stove, windows and coverings were new. A part had to be replaced on the stove when the tenants moved in.

The landlord's first witness (GM) is a licensed real estate agent and has been for 22 years. The witness testified that when the landlord purchased the rental unit it had just been renovated and was in perfect condition, including windows, floors, trim and kitchen counters.

After tenancies in the 2 units ended, both were as bad as the witness has seen, and both were pretty much destroyed, including floors, trim, moldings, a rancid smell, and it was bothering how bad they were; both were equally in horrible condition. The witness examined the rental unit and determined what had to be replaced multiple times. Being in the rental unit 12 to 15 times, the witness noticed the damages that were not in that condition when the landlord purchased it.

The rental units were taken off the market initially because the landlord's kids were moving in, and their father from overseas and the witness encouraged that. The market had shifted and it made sense to keep the units as an investment.

After the tenants moved out everything was replaced; flooring, paint, trim, doors, fixtures. Everything was in disrepair. The witness would stop by every few weeks to see the renovations, and the contractor had to cut plywood out of the floor because the rancid smell was right in the plywood. The renovations made were similar to the way the units were previously, and of the same quality.

The first plan of the landlord was to sell to an investor, but that changed when the landlord's kids wanted to move in, so the home was taken off the market. After some time, one child who suffers from autism didn't want to move in. By the time renovations started, due to tenants moving out late, the timeline didn't work out and things just changed.

The landlord did not sell for a profit, and at a bit of a loss probably.

The landlord's second witness (BE) testified that he is a journeyman carpenter, house builder and formerly an inspector, and has been a contractor for about 15 years.

The witness was in the rental unit and described it as a disaster, with items all over and shocking when he first saw it. The witness wasn't able to go in at first because tenants were still there. Once the witness got in he saw damage to the appliances, drywall and smell of animal urine and feces. A hazmat company was called to remove insulation, and the witness needed a mask – it was a disaster. Definitely pets had peed on the carpet, it was torn, and the witness had to treat floors underneath to mitigate it. There was nicotine staining on the walls in the bedroom, a cat litter box set up on the window outside of the 2nd bedroom which had leaked down the wall into the electric baseboard heater. It was one of the worst that the witness has seen.

The rental unit was renovated with new floors, drywall, insulation in the attic space, and many spaces for rodents to enter in the carport area were closed. The renovations took about 4 or 5 months.

The landlord told the witness that the landlord's plans for the property was for her kids to move in, and was not planning to sell for profit. The landlord just wanted her place back, and the witness needed to take care of it. It was not renovated as "high end," just to get it done appropriately. It was not an upgrade, but remediation.

The landlord's third witness (LHW) testified that she helps to renovate and remediate homes, mostly helping friends and family with small jobs. The witness helped the landlord remediate the rental unit so it would be livable for the landlord's son (PE). The intention was for him to move into the rental unit. He has special needs so the landlord brought the witness in to design and remediate it so he would be able to live there.

The witness has a son who suffers from ADHD, and goes to school with the landlord's son, and the landlord knows what the witness does.

The first time the witness was in the rental unit, it was during COVID, so the witness had to wear a mask, but the smell hit the witness through the mask. It was horrible. Everything was in disarray. Appliances appeared to be damaged, and there had been hoarding in the house. The carpet was in horrible shape, mold existed as well as smoke-damaged walls. The witness has never seen a place in worse shape and was appalled at the state of it. It was bad outside was well as inside.

The rental property is about 1200 or 1300 square feet, and the witness believes it cost over \$70,000.00 to remediate; ripping up and replacing floors, light fixtures were smoky, appliances were damaged, floors were disgusting, and the storage area was in horrible

shape. Basically, everything needed to be gutted. After the tenants vacated, the witness saw that the front of the stove had tipped or something, and the inside of the fridge was disgusting. It was not salvageable for someone like the landlord's son (PE).

The witness was also in the other unit, which is separated from the rental unit by a common wall. The other unit was just as bad. Washers and dryers were not replaced; they were in relatively good shape, but the fridge and stoves in both units were not something that the witness would use. There were no dishwashers and the witness suggested that the landlord have them installed for her sons. Both units smelled of urine.

One of the things that the landlord's son is sensitive to is the sense of smell. If he goes into a property and the smell is overwhelming, he can't be there. The carpet had to be removed because the smells would be overwhelming and was beyond repair. Everything that the witness did was an attempt to make it livable for the landlord's son so he would be willing and would enjoy living there. The witness replaced lights, blinds were in horrible shape, covered in yellow smoke, and everything had to be adjusted to provide an environment for his sensitivities. The landlord's son is autistic and the landlord hired the witness to make it livable for him, not for another person.

The witness also testified that the tenants were late moving out and the landlord accommodated their request, and went out of her way to pay for and bring in a dumpster to help the tenants get rid of things. The witness has never had a landlord who was that supportive and conscientious.

The witness served the notice to end the tenancy on December 27, 2021 by delivering it to the tenant (DF) in person.

The tenant's witness (CM) testified that he worked for the landlord from February, 2021 to September, 2022, and became an acquaintance of the tenant after she moved out. The witness did some basic maintenance in the yard and some work in both units after the tenants had vacated.

The witness understood that the landlord's son (PE) was going to move into the rental unit and his brother would move into the other unit. However, the landlord has been deceptive, and put the rental home up for sale before the time it was legally allowed. Having been renocted 3 times, it's quite an issue with the witness. It's deception that the witness doesn't appreciate.

There was a cat patio on the building on the central portion of the house, which was removed prior to work being done. The witness hit his head on it while doing work. It was removed while the witness was removing the deck, and was gone before the contractors were there.

The witness has an acute sense of smell and could not smell urine in the rental unit. The witness told the landlord that the rental unit was somewhat chaotic; a lot of stuff was there, but not about walls. The witness noticed windows and blinds, but the rental unit wasn't dirty, scented and there were no odours at all.

The witness knew the landlord was renovating one unit for her son and doing some repairs, but having the other son (PE) was not something that the witness knew at the time. The landlord was thinking about that but it hinged on her ex-husband moving there as well.

The tenant testified that in February, 2022 the tenant's family got COVID. On February 26, 2022 the tenant told the landlord that the tenants found a place with an Immunol compromised person, and couldn't leave but had to quarantine. The tenant asked the landlord if she knew what the tenant should do, who suggested that the tenant provide a positive test result, and pay rent for March, 2022 and the tenants could stay for an extra 3 or 4 weeks if needed. The landlord asked if the tenant was ready to move, and gave the option of paying rent on March 1, which gives the tenants another month, or if the tenants moved out in March the landlord would reimburse the tenants a daily amount. The landlord's eldest son was to move into the rental unit and the other son into the other unit on April 1.

At move-out the stove was dented abit at the top but in good working order, and the tenants cooked on it until they left, but did not clean it. The tenant told the landlord that the tenant wasn't doing deep cleaning. Also the tenant had tripped on furniture and her elbow and backside left a dent in the drywall. The tenant contracted a cleaner who quoted \$800.00 to \$1,200.00 for cleaning, and a drywall contractor would charge \$150.00 to repair the drywall. The tenant told the landlord to keep the security deposit and pet damage deposit to pay for cleaning and drywall damage.

The kids were dealing with things the best they could while the adults were unwell, and there were spills in the fridge. There was no time to clean and remove all belongings while the tenants had COVID.

During the tenancy the landlord never inspected the rental unit. The landlord arrived once bringing cookies when the tenants first move in but was not there again until selling, at which time the parties had a conversation outside, not inside the rental unit.

The reason the tenant feels this eviction notice was given in bad faith, the rental unit was up for sale after the landlord told the tenants she wouldn't sell, then a week later the sons were moving in as noted in the notice to end the tenancy, which was the first the tenants had heard of that. Then it was listed again 2 ½ months later. The tenant vacated in March and the home was listed for sale in July. The 4th of April was the last day the tenant was physically on the property, and the listing date is July 18.

The tenant's niece is also autistic, and the tenant has experience with autistic children. The landlord would have to spend time explaining a change to an autistic child. It would take 6 months to adjust. It was unrealistic for the landlord believed that her son would accept the change; he can't adjust to quick change.

At the beginning of the tenancy the fridge had a cracked handle as well as inside, shelving in the door had white tape wrapped around it. The oven was not working, which was repaired. The stove had paint on it. The driveway was broken, had a huge crack in it and the tenants had to fix it before driving on it. There was rodent feces in the carport room which the tenants used for storage, and had to clean it. The deck was rotted in the back, trees were overgrown and bushes in front, which were trimmed when the rental home was to be sold.

The landlord told the tenant that she had purchased the rental home and got the keys the day that the tenancy agreement was signed, and the tenants started to move in that day.

The tenant has provided photographs depicting the condition of the rental unit at move-out. The tenant did not clean, but gave the security deposit to the landlord to deep clean, indicated orally and by email.

The tenant did not ask the landlord to allow the tenant to stay longer. The tenant's email of February 26 does not imply that, but the tenant was wondering about what to do because the landlord knows a lot of people and perhaps she might know someone that might have an idea about moving into a place with an immune-compromised person. The tenant asked everyone she could about what she should do. The ideal situation would have been to find a place. The tenant had a place, but there was a health issue of a child. Also, the tenant couldn't rent a truck due to COVID rules, even though it was already booked. The tenant did take the landlord up on the offer to stay.

The landlord was re-called for rebuttal testimony. The parties spoke on the phone and the tenant said there was no way she could move out due to COVID and showed the landlord a positive test. The tenant said it was not possible to pick up the moving truck, that she was to stay quarantined and absolutely could not leave. The landlord didn't know what else to do, and suggested a daily rate but the tenant said she needed a week. The landlord didn't think it would take a week, but would be longer, and a daily rate would allow the tenant to leave when it was safe to do so. She asked to stay and told the landlord she could not physically leave the unit.

An email contains a type-o, which states that the older child would be moving into the rental unit, but the other child was. When the property was purchased in 2018 it was purchased for the landlord's 2 boys and they chose their own units when they walked through. The rental unit was chosen by the autistic son (PE) because it was closer to the bus stop. The other son wanted the other unit because it was closer to the beach. There was no question which son would occupy which unit.

The landlord's son moved out September 7 or 8, 2022 when he got accepted to university. He didn't get in the first year, but tried again and got a late acceptance and moved away on the 10th.

SUBMISSION OF THE TENANT'S ADVOCATE:

The tenant brought this dispute recognizing that the burden of proof is on the tenant, and the tenant's Advocate believes the tenant has passed that bar.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The landlord has established that the intent was for the landlord's son (PE) to move in, but extenuating circumstances existed. Witnesses have testified that the landlord was caring throughout.

Residential Tenancy Policy Guideline 50, provided for this hearing, states that the director may excuse the landlord if extenuating circumstances exist, which this is. The Two Month Notice to End Tenancy For Landlord's Use of Property was not issued in bad faith and does not warrant compensation to the tenant. The landlord was well-intentioned, spent a lot of money fixing up the rental unit, which did not sell at a profit, and life happens which is challenging when you have an autistic child. The failure of the

landlord's son to move in was caused partially by the way the tenant left the rental unit at move-out.

Analysis

Firstly, I disagree with the tenant's Advocate; the onus is on the landlord to establish that the rental unit was used for the purpose contained in the notice to end the tenancy within a reasonable time after the effective date of the notice, or that extenuating circumstances existed that prevented the landlord from accomplishing that purpose.

I have reviewed all of the evidentiary material of the parties, and there is no question that the tenant did not clean the rental unit at the end of the tenancy, and I accept the tenant's testimony that estimates of \$800.00 to \$1,200.00 and \$150.00 were received for the cleaning and drywall damage, respectively, and the tenant told the landlord to keep the \$1,100.00 security deposit and pet damage deposit of \$1,100.00 to cover that.

The tenancy lasted for almost 4 years, and there were no move-in or move-out condition inspection reports completed.

I have reviewed all of the evidence of the parties, and particularly the medical information about the landlord's son (PE) and testimony of the landlord and witnesses, all indicating that the landlord was not able to convince the son to move in due to the condition left by the tenant at the end of the tenancy. I find that the landlord has established good faith intent, and I accept that the landlord and family were excited about the move, which was delayed firstly by the tenant's inability to move out on time due to COVID, then by the repairs and renovations required. I also accept that those issues spooked the landlord's son, who was no longer willing or able to move into the rental unit.

I have also considered the testimony of the parties and the witnesses. The tenant's witness (CM) testified that the witness has an acute sense of smell and could not smell urine in the rental unit, but it was somewhat chaotic. The photographs depict a rental unit that is very unclean, and I accept that the landlord's autistic son was not willing or able to move in.

In the circumstances, I am satisfied that extenuating circumstances existed that prevented the landlord from accomplishing the purpose for ending the tenancy. The tenant's application is dismissed. Since the tenant has not been successful with the application the tenant is not entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby 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: March 15, 2023

Residential Tenancy Branch