



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Port Kells Nurseries Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation under the Act in the amount of \$10,200.00, and to recover the \$100.00 cost of their Application filing fee.

The Tenant, S.F., and an agent for the Landlord, S.T. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and the Parties confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they directed me in the hearing.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy started on March 1, 2018, without a tenancy agreement; however, they agreed that the Tenant and Landlord signed a fixed-term tenancy agreement, which started on November 1, 2019, running to January 1, 2020, and then operating on a month-to-month basis. They agreed that the Tenant paid the Landlord a monthly rent of \$850.00, due on the first day of each month for the lower level rental unit in a house with two suites. The Parties agreed that the Tenant did not pay the Landlord a security deposit, nor a pet damage deposit. They agreed that the Tenancy ended on January 1, 2020, based on the Landlord serving the Tenant with a Two Month Notice to End the Tenancy for Landlord's Use, dated October 16, 2020 ("Two Month Notice").

The Tenant submitted a copy of the Two Month Notice, that she received from the Landlord. This was signed and dated October 16, 2019, has the rental unit address, and was served by posting it on the door or in the mail box or mail slot of the rental unit on October 16, 2019. It has an effective vacancy date of January 1, 2020, and was served on the ground that: "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)."

In the hearing, the Tenant said:

Currently, [the rental unit] is rented out to a friend of the girl who lives upstairs, the daughter of the Landlord, [R.]. I do have a personal relationship with the Landlord – or I had one - I was a close friend of [R.'s] for 10 years and a former employee of the business. I lived downstairs in the unit from [R.], and she arranged to have us evicted, so a different friend of hers could live there.

I submitted screen shots from people who know . . . saying [C.] had moved in, and a screen shot of a picture from her [social media account] of the garden that my partner and myself build in the back yard. Also, a photo of her car parked in the driveway at the lower level parking lot.

The Tenant also submitted a number of screen shots of a texts she has had with [R.], [C.] and other friends. These texts were reproduced as written below.

First, the Tenant said she received the following from [R.] dated August 1, 2019:

Just to let you know so you don't get worried when you read it. My dad has started putting an end date on the tenancies. This DOES NOT mean that you have to leave when its over, and it doesn't mean once that is up that the rent can increase. it's only because hes learned the hard way with that blue house down the street from us that if he does month to month he has no option legally to evict someone. Again, not that he ever will, but it's just to cover his ass with all his properties.

The Tenant's next screen shot shows a text exchange between the Tenant and [R.], which is dated August 4, 2019:

[R.]: okay no worries, I'll change it but I wont be able to get it to you until Monday night.

[Tenant]: that's okay. also.. the Jan '20 is obviously pretty scary.. can we change that so we know we'll still be here a year from now..

[R.]: well like I explained, it's not a move out by this date thing. And I figure rather than having it in the middle of the year, it would be January 2020, and then ever year when it gets redone itll be the same thing, so January 2021, etc.

The Tenant's screen shot of an undated text exchange with another friend:

[Tenant] has she mentioned anything to anyone about anybody moving in?

[J.M.] Her friend lives there
Cassidy or something
Cass

...

They aren't allowed to put there car in the car port? Why?

[Tenant]: they evicted us so that 'family' could move in.

[J.M.] Oh
Oops

[Tenant]: if [C.] lives there now, they owe us ALOT of money

[J.M.] She does
I'm like 90% Sure

[Tenant]: I sure hope so.

[J.M.]: She said she was moving in and then I think a few days ago she said she's in now
She said it's nice having [C.] or whatever downstairs
And [Co.] lives w her too
Uhmm don't tell her I told u...

[Tenant] hey, when you were talking to [R.], were you talking in person or over text?

[J.M.] In person

[Tenant] ookay, do you remember around how long ago she told you [C.] was planning on moving in? sorry, I know you dont wanna be involved but you're the only person that I know knows about this.

[J.M.] I'm sure she's told all the other girls too
Uhm idk exactly
But I know she's there now
She told me before I left to have the time off in January about the person who was moving in

[Tenant] holy smokes lol so before we even moved out that's wild

The Tenant's undated screen shot of a text exchange with [C.]

[Tenant] hey [C.]! I heard through the grapevine that you moved into the suite [J.] and I used to live in and I just wanted to say that I really hope it works out well for you guys. theres obviously still alot of hurt

there with everything that went down between [R.] and I so I wasn't planning on saying to her myself, but that doesn't mean I don't still want what's best for her, and that I don't still want her to be happy. I definitely feel like living with someone more like her is what's best, and I really hope you're all happy!

[C.] Hi [Tenant],
Thank you for that, I know she wants the best for you as well.
Wishing you all the best as well with your soon to be little one!

The Tenant submitted a screen shot of a photograph of and text by [C.], in which [C.] stated that she moved over the Christmas season of 2019. The Tenant also submitted a photograph of a white vehicle in a car port next to a house, which she said belonged to [C.] and was outside the rental unit.

The Agent said:

It sounds like she's claiming that the Landlord re-rented the unit to a non-family member. We don't have a tenancy agreement with anyone. The daughter has a tenancy agreement for the entire property.

The Tenant said:

Regarding the tenancy agreement – I don't think so. [R.] did live in the upper two levels of the house before the tenancy agreement was signed. I know the layout of the house – two completely separate units. Why take over two suites for her and her boyfriend – that's three levels?

The Agent said:

Yes, [C.] is one of the roommates. She occupies the house with [R.]. [R.] has expanded as part of the notice to [the Tenant], as she will be occupying the entire house now.

The Tenant said:

[C.] is a roommate versus having her own suite? That is an outright lie. The layout of the house are separate areas. There are two driveways to the house, two very distinct living spaces. The suite my partner and I lived in has a kitchen

and bathroom, completely closed off of [R.'s] area upstairs. It's a good loophole saying that [R.] is technically occupying the house when she brought in a new roommate. And as far as I'm aware, her boyfriend still lives upstairs with her.

The Agent said:

I could understand her concern. They are very separate suites, but as [the Tenant] testified, there's a set of stairs connecting them. It has become one living area, with the stairs connecting up to the main floor. If she is concerned with where [C.] parks, there are stairs that go up to the main house from the carport entrance – stairs right up to the main living area.

The Landlord submitted a copy of a tenancy agreement between the Landlord and [R.], dated January 1, 2020. They also submitted a copy of a receipt for \$1,000.00 rent received from [R.] dated January 3, 2020.

The Tenant said that she had discussions with [R.], which she said show:

...that we were occupying the rental unit together, more than just co-tenants. It seems convenient wording and timing – why now turn the entire space into one home?

[R.] and I were best friends since high school. It's a bit odd that they would make it into one living space. That's about that. The evidence that the Landlord submitted - what I thought they were essentially doing is that they moved out and Robyn moved in - but we lived together in the house.

On July 5, she said now that we've been in the place for over a year, Dad wants me to write up a tenancy agreement - one for you and [J.], and one for me.

We had conversations about splitting bill money for the entire house, and coming up stairs to speak with her about 'our yard', the laundry room – it shows we shared the whole house. It looks like we were evicted, and Robyn moved in, but Robyn lived there the entire time. We both lived there at the same time, not we moved out and Robyn moved in.

The Agent said:

I don't know if [[C.] pays rent to [R..]]. [C.] was trying to find a place to live and

[R.] was helping her out as a roommate for a little bit. I don't know if she pays for groceries, but the rent we received from [R.], the Hydro bills under [R.'s] name, as well.

The Tenant said:

I did mention earlier that it is a large house – 5 bedrooms in all three floors. It seems too convenient that she took over the entire house for her and her boyfriend - all five bedrooms.

The Agent said:

Eviction of [the Tenant]? It was because [R.] wanted to occupy all three floors, instead of the two. More space . . . I have a similar set up - more space than I need; what she uses each room for what, I don't know.

The Parties made the following last statements at the end of the hearing:

The Tenant said:

As a whole, I think it was hurtful. [R.] and I were really good friends for 10 years, and to have this happen the way that it did is really painful to go through. And to find that another friend of hers moved in - I was six months pregnant when we were evicted.

The Agent said:

I'm happy with the evidence we've submitted showing that [R.] is occupying the entire household. She has a boyfriend . . . we have a rental agreement between the Landlord and [R.] and [D.].

Analysis

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

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49 of the Act also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse. However, the Landlord is a corporation, not an individual, and section 49(4) of the Act states:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I infer from the evidence before me that [R.'s] father is behind the family corporation that owns residential properties, including the residential property. I find from both Parties' evidence that [R.s] father owns voting shares in the corporation.

The evidence before me is that the Landlord's daughter, [R.], lived in the residential property prior to the Tenants' eviction, and that no other close family member moved into the rental unit after the Tenants moved out. Rather, the only new occupant of the residential property is [C.], another friend of [R.].

The Agent confirmed in her testimony in the hearing that: "Yes, [C.] is one of the roommates. She occupies the house with [R.].". I note that the Agent's statement is in the present tense, not the past tense, as she suggested that [R.] was doing [C.] a favour in letting her stay there for a short period of time. Rather, I find from the Agent's testimony that [C.] lived in the rental unit at the time of the hearing, which was November 27, 2020, or eleven months after the Tenants were evicted by the Landlord.

Res Ipsa Loquitur is a legal concept, meaning: "The thing speaks for itself." *Res ipsa loquitur* is a doctrine in the Anglo-American common law that says in a tort lawsuit a court can infer negligence from the very nature of an accident or injury in the absence of direct evidence on how any defendant behaved.

Although this situation does not involve a tort, I find from the evidence before me that the circumstances surrounding the Tenants' eviction are analogous to the doctrine of *res ipsa loquitur* – on the face of it, it looks like the Landlord evicted the Tenants, so that the corporate owner's daughter could invite another friend to live there.

The Agent did not deny that [R.] lives in the residential property, and lived there prior to the Tenants' eviction, and that no other close family member moved in after the Tenants

moved out. The stated purpose of the Two Month Notice was that a close family member of the Landlord would move into the rental unit, which was why the Tenants were evicted. The only family member in the residential property at the time of the hearing was [R.], who already lived in there before the eviction. Therefore, I find that [R.] did not move into the rental unit, as a result of the Tenants moving out.

The Agent asserted that [R.] wanted to occupy the entire residential property, and she implied that this equates to [R.] moving into the rental unit, too; however, the undisputed evidence before me is that [C.] moved into the residential property. Further, based on the Parties' testimony and the Tenants' texting evidence of having communicated with [R.M.], [C.] and [R.], I find on a balance of probabilities that it is common knowledge among [R.'s] friends and others that [C.] had planned to move in prior to the Tenants' vacating the rental unit, and that she did move in after they moved out.

I find that the only tangible change in the occupation of the rental unit is in [C.] having moved in after the Tenants moved out, based on the Two Month Notice. I find there is insufficient evidence before me that [R.'s] use of the residential property changed in any discernible way, other than to gain a different house mate. I find it is more likely than not that [C.] now occupies the rental unit formerly inhabited by the Tenants.

Section 51(3) of the Act states:

(3) 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 Agent did not provide any extenuating circumstances for why the stated purpose of the Two Month Notice was not realized within six months of the end of the Tenants' tenancy.

As explained in Policy Guideline 50:

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

[emphasis added]

The effective vacancy date on the Two Month Notice was January 1, 2020, and I find that within six months, by June 30, 2020, the stated purpose for the Two Month Notice had not been accomplished.

I find that the Agent did not provide sufficient evidence of any extenuating circumstances or other reason for why this situation should not fall under section 51 of the Act. The Tenants have the burden of proof in this matter, and I find that [S.F.] provided sufficient evidence to support the Tenants' claim that the Landlord did not use the residential property for the purpose stated in the Two Month Notice.

Based on the evidence before me, overall, I find that the Tenants are successful in their Application, because I find the Landlord breached section 49 and 51 of the Act, by not taking steps within a reasonable period after the effective date of the Two Month Notice to accomplish the stated purpose for ending the tenancy.

I, therefore, award the Tenants twelve times the rent of \$850.00 or **\$10,200.00** pursuant to sections 51 and 67 of the Act. Given their success, I also award the Tenants recovery of their **\$100.00** Application filing fee, pursuant to section 72 of the Act. Accordingly, I grant the Tenants a Monetary Order of **\$10,300.00** from the Landlord, pursuant to section 51(2) of the Act.

Conclusion

The Tenants are successful in their claim for 12 times the monthly rent in the amount of \$10,200.00. The Tenants are also awarded recovery of their \$100.00 filing fee for this Application from the Landlord.

I grant the Tenants a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$10,300.00**.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 10, 2020

Residential Tenancy Branch