



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenants applied for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated July 8, 2020 ("Two Month Notice") in the amount of \$17,400.00.

The Tenants, the Landlord and her son, an agent for the Landlord, B.D. ("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 Tenants and the Landlord 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 Tenants provided the Parties' email addresses in the Application, and they confirmed these addresses 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.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on June 1, 2018, and ran to May 31, 2019, and then operated on a month-to-month basis. They agreed that the Tenants paid the Landlord a monthly rent of \$1,450.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$725.00, and no pet damage deposit.

The tenancy ended when the Tenants moved out on September 1, 2020, based on having received the Two Month Notice from the Landlord. The Tenants seek compensation from the Landlord, because they say the Landlord did not use the residential property for the purpose set out in the Two Month Notice.

The Two Month Notice was signed and dated July 8, 2020, it has the rental unit address, it was served in person on July 8, 2020, with an effective vacancy date of September 30, 2020. The Two Month Notice 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). The Two Month Notice further specifies that the Landlord or the Landlord's spouse will occupy the rental unit.

In the hearing, the Tenants said:

Well I guess at this point I'm under the understanding that the Landlord must act in good faith with said eviction notice. When it originally arose, she was going to move onto the property. It started there and she eventually told us that we were to accept the terms, or we would be evicted. That didn't sit well with me, and we decided that we'll leave it at that. Not too much later, she served us with an eviction notice.

We complied and found a temporary place to go and left the unit. My pregnant

girlfriend and I found a place in mid-pandemic, and not two months later [the Landlord] advertised online for more that the initial rent was when we had been evicted. She's supposed to act in good faith, no ulterior motive. Only two months after we were evicted that she re-rented the unit. A landlord is not acting in good faith if she rents it We don't feel that those said laws were being respected, and I guess here we are on the phone.

The required consequences for not using the property stated in the eviction notice, that is where we find that we are eligible for compensation due to Part D of the legislative framework for ending a tenancy. Even on the back of our eviction notice it says the Landlord must act in good faith. We are just following the protocol for an eviction, especially mid-pandemic.

Sections 49 and 51 of the [Act] apply re tenants' compensation. We believe that due to [the Landlord's] loss of two jobs during the pandemic, resulting in her having to move back [to town]. The rental unit is the domicile and not the surrounding property. She decided to use the yard for herself and she stated the plan. After moving back in on October 2, she had gotten a job at the [P.B.]. Then the second wave of Covid hit and the [P.B.] was shut down. She moved her fifth wheel on to the property and shared the house and property with a roommate, Tami. [The Landlord] used the kitchen the bathroom of the house.

The Agent said that Tami is the Landlord's roommate who helps with the bills at \$800.00 a month. When asked about the Landlord having advertised the rental unit two months after the Tenants moved out, the Agent said:

Mom panicked and put up the ads. She could no longer support herself due to the pandemic. But there were extenuating circumstances. Tami was found as a roommate. We're not denying at all the use of the advertisement.

The Landlord said: "I live there."

When asked about the Landlord's extenuating circumstances for not accomplishing the stated purpose set out in the Two Month Notice, the Agent said:

It was a loss of income property when the first wave hit, and she lost her first job. She then tried to negotiate with the Tenants to share common areas of the property. She was bullied; they straight up scared her. Okay, she was going to

move into the property when she got the other job. The second wave came, losing this job, needing help with the bills.

I can't iterate enough that it is an added bedroom. Tami isn't paying anything close to what the Tenants were . . .

That would have been under a different situation. They were going to maintain the house and once she was using the . . . She would have used the amenities of the fifth wheel, but she didn't want to; she wanted to keep using the bathroom.

The Landlord submitted a statement from Tami, which says:

To whom it may concern

January 11th, 2021

I Tami [D.] am writting this letter to confirm I have a verbal tenancy agreement on a month to month and room mate basis with [the Landlord].

We reside at [residential property address] our mailing address is Box . . .

[The Landlord] has a travel trailer behind our resisence as "her bedroom" only.

Myself and my son use the two bedrooms within the home.

She has full unrestricted access to our home, she uses the fridge/freezer washer/dryer and bathroom.

All utilities are in her name and I contribute funds towards the bills when I can.

Sincerely,

Tami [D.]

[address, telephone number

email address

Signature]

[reproduced as written]

The Tenants said:

I mean I guess, both [A.] and I lost work during the pandemic. We were all struggling to maintain housing, and initially when [the Landlord] had said that she was planning to move the fifth wheel onto the property, there would need to be shared laundry; there should have been some sort of compensation for us to help

her live in the yard. We would not be completely unattached or unaffected. There was wishes of shared laundry and shared bills. That was a point on which our conversation went in the past. Otherwise, I mean if I were in their situation, the statement from her tenant could have been fabricated, just as easy as . . . I don't see that there's proof that she's a roommate and not a tenant from the advertisement.

It seems like if she was going to use her fifth wheel with us, why wasn't she going to use the amenities?

The Agent said:

The reason is because she was already living in the main home. The fifth wheel wasn't on the property yet. The agreement with [the Tenants] - she didn't want to take over the house from people who were already there. She isn't going to give up her entire house. She has a fifth wheel on the property. The shared laundry is an outside laundry machine, which wouldn't have required . . .

The Tenants said:

It says here that if the Landlord wishes to move onto the property, there needs to be compensation, but she wasn't willing to compensate us for the loss of amenities, which led me to reject her offer.

The Agent said:

That's untrue. That the conversation re compensation went anything like that, they were threatening, mean, bullying. It was all done by phone, so no one can prove anything. That's not how that went.

There would have been shared electricity - sharing bills the rent would have stayed the same. Laundry. No reduction in rent? We never got there before it became very clear. The decision was made to take the property back for Landlord's use. That was never not part of the conversation.

First, she never said I am doing this. It was an ask. We never said we are doing this. That never happened. There was a conversation by telephone of Mom moving onto the property.

In their last statements in the hearing, the Parties said:

Tenants:

I do have a pretty good recollection of how the phone conversation went. A series of phone calls of her moving on to the property. My discomfort was expressed. I was then called again, and I had said that what she's asking moving on to the property, sharing amenities, is required to be compensated. It's a breach of contract, so I was waiting for some offer of compensation of what our initial agreement was, because she was no longer respecting the original agreement.

With no compensation, I refused to accept. . . that led to conversation to go: 'do not get a lawyer; I know what I'm doing'. If there was any aggression it was not expressed by us. It ended that we accept the terms presented or be evicted.

I think basically, at this point those are the rules that need to be followed and those are my issue with this.

The Agent said: "To point out one thing, that [the Landlord] was trying to find a way to make things work with the Tenants. She was not obligated to at all. It shows good faith. She lost her job in Vancouver. There was no obligation to have that conversation at all."

The Landlord said:

I really didn't want to make them move. But [the Tenant] became frightening to me. I could not live with them. He keeps saying 'do not get a lawyer,' but he cut me off so violently. You don't need a lawyer for this part – he never let me finish that sentence.

I think the most important thing is that I live in the house. I just don't understand. Everything is in my name – all the bills are in my name.

Analysis

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

Section 49 of the Act states that a landlord who is an individual may end a tenancy, if the landlord or a close family member of the landlord intends in good faith to occupy the

rental unit. Section 51 of the Act sets out a tenant's compensation, after the landlord serves the tenant with a notice to end the tenancy under section 49.

Pursuant to section 51(2), such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord if (a) the landlord has not taken steps, 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.

As explained in Policy Guideline 50 ("PG #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.

Based on the letter submitted from Tami [D.], I find it is more likely than not that the Landlord found another tenant with whom she could live on the residential property out of her fifth wheel trailer. However, if the Landlord is sharing the kitchen and bathroom with Tami and her son, and pursuant to section 4 of the Act, this arrangement does not fall within the jurisdiction of the Act.

Regardless, I find that the Landlord did not fulfill the purpose of the Two Month Notice by moving into the rental unit. Rather, she allowed two people to move in, pay her \$800.00 a month and contribute to the bills monthly. I find that the Landlord's only motivation in serving the Two Month Notice and advertising for new tenants (roommates?) was to address her financial difficulties, having lost her job(s) during the pandemic.

Policy Guideline #2A, "Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member" states:

Section 49 of the *Residential Tenancy Act* (RTA) allows a landlord to end a tenancy if the landlord:

1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit.

...

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.

If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months **and** that they have no other ulterior motive.

I find that the Landlord did not occupy the rental unit, but rather, that she occupied her fifth wheel trailer, which she had parked on the residential property. I find that she advertised and found other tenants to live in the rental unit, which is not the purpose

that the Landlord set out on the Two Month Notice. Accordingly, I find that the Landlord breached the Act, and therefore, that the Tenants are eligible for compensation pursuant to section 51 of the Act.

I, therefore, award the Tenants with **\$17,400.00** or 12 times the monthly rent they were paying to the Landlord at the time of their eviction. I grant the Tenants a Monetary Order of \$17,400.00 from the Landlord pursuant to section 51 of the Act.

Conclusion

The Tenants' claim for recovery of 12 times the monthly rent is successful in the amount of \$17,400.00. The Landlord did not provide sufficient evidence to establish her good faith intention for herself and/or a close family member to occupy the rental unit – the purpose of the Two Month Notice.

I, therefore, grant the Tenants a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$17,400.00**.

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.

Although this Decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the Act states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a Decision affected, if a Decision is given after the 30-day period set out in subsection (1)(d).

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: June 10, 2021

Residential Tenancy Branch