Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Tenants CL (the tenant) and JL and respondent SL attended the hearing. SL represented landlord 1171725 BC LTD (the numbered company). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Respondent

SL affirmed the numbered company was the landlord, as it owns 100% of the rental unit. SL is a director of the numbered company.

SL served a 2 Month Notice to End Tenancy (the Notice). The Notice was submitted into evidence. It states the landlord is the numbered company and it is signed by SL.

Based on SL's testimony and the Notice, I find the landlord was the numbered company and SL acted as a representative of the numbered company.

Pursuant to section 64(3)(a) of the Act, I have amended the tenants' application to exclude SL as a respondent landlord.

Issues to be Decided

Are the tenants entitled to:

1. a monetary order in an amount equivalent to twelve times the monthly rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule of procedure 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent."

Both parties agreed the tenancy started in May 2012 and ended on September 30, 2020. Monthly rent was $1,850.00, due on the first day of the month. At the outset of the tenancy a security deposit of $900.00 was collected and the landlord returned it. The numbered company purchased the rental unit in September 2018.

Both parties agreed the Notice was served on July 03, 2020. It states that the landlord is a family corporation and 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. The effective date was September 30, 2020. SL served the Notice because she wanted to move to the rental unit with her husband, her children and her mother-in-law.

Hereinafter I will refer to the SL, her husband, her children and her mother-in-law as "the landlord's family".

SL stated that she owns 20% of the numbered company and the remaining 80% are owned by her sister and her brother.

The tenants are claiming compensation in the amount of $22,200.00 (12 months of monthly rent payment of $1,850.00) because the landlord's family did not occupy the rental unit.

SL claims that extenuating circumstances prevented the landlord's family from occupying the rental unit.

SL testified that she repaired the floor and patched wholes on the walls after the tenants moved out. SL intended to move in before Christmas 2020. SL said that her sister-in-law got Covid in November 2020 and she lives with her mother-in-law. SL's mother-in-law got Covid after Christmas 2020. Later SL affirmed her mother-in-law got Covid in January 2021 and her health only improved after several weeks. SL's mother-in-law has the status of permanent resident of Canada but decided not to move to Canada because of her health. As SL's mother-in-law decided not to move to Canada, SL could continue to live in her previous house.

SL advertised the rental unit for rent on March 28, 2021 asking for $3,500.00. The landlord re-rented the rental unit in July 2021 for $3,000.00.

The tenant stated the landlord owns the property next door and several other properties in the same city, the landlord applied for a permit to redevelop the rental unit and did not complete necessary repairs in the final months of the tenancy. The tenant testified that SL threatened to evict them because they were asking for repairs.

SL said the application for a redevelopment permit was cancelled.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Per section 51(2) of the Act, the onus to prove the case is on the landlord.

Sections 49(1) and (2) of the Act states:

(1)In this section:
"**family corporation" means a corporation in which all the voting shares are owned by**
(a)one individual, or
(b)one individual plus one or more of that individual's brother, sister or close family members;
"landlord" means
(a)for the purposes of subsection (3), an individual who
(i)at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
(ii)holds not less than 1/2 of the full reversionary interest, and
(b)for the purposes of subsection (4), a family corporation that
(i)at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
(ii)holds not less than 1/2 of the full reversionary interest;

(2)Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy
(a)for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
(i)not earlier than 2 months after the date the tenant receives the notice,
(ii)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
(iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy […]

(emphasis added)

Per section 49(4) of the Act, "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."

Residential Tenancy Branch Policy Guideline 2A 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;

> **2. is a family corporation and 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;**
> 3. enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit.
> **"Landlord" means an individual or family corporation who at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest.**
> "Close family member" means the landlord's parent, spouse or child, or the parent or child of the landlord's spouse. A landlord cannot end a tenancy under section 49 so their brother, sister, aunt, niece, or other relative can move into the rental unit.
> **"Family corporation" means a corporation in which all the voting shares are owned by one individual, or one individual plus one or more of that individual's brother, sister or close family members.**
>
> (emphasis added)

As referenced in the topic "Preliminary Issue – Respondent", the landlord is the numbered company and SL represents the landlord.

Based on the SL's convincing undisputed testimony, I find that SL owns 20% of the numbered company, and SL's brother and sister own the remaining 80% of the numbered company. The numbered company is a family corporation, per section 49(1)(b) of the Act.

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

Section 51(3) states the landlord may be excused from paying the tenant the amount required by section 51(2) if extenuating circumstances prevented the landlord 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.

Residential Tenancy Branch Policy Guideline 50 states:

> E. EXTENUATING CIRCUMSTANCES
> **An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:**
> □ A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
> □ A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
> □ A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.
> **The following are probably not extenuating circumstances:**
> □ A landlord ends a tenancy to occupy a rental unit and they change their mind.
> □ A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations
>
> **(emphasis added)**

The commonality of the examples outlined in the guideline for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority or control over the event.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find SL's testimony about extenuating circumstances was vague and not convincing. The landlord served the Notice on July 03, 2020. The tenancy ended on September 30, 2020, SL conducted minor repairs and her mother-in-law was diagnosed with Covid in January 2021, more than 3 months after the Notice's effective date. I find that SL

intended to move to the rental unit at least more than 3 months after the Notice's effective date and this is not a reasonable period.

SL did not explain how the health situation of her sister-in-law in November 2021 stopped her mother-in-law to move to Canada. SL decided not to move to the rental unit because her mother-in-law decided not to move to Canada.

Furthermore, SL did not address the tenants' convincing testimony about the landlord owing other rental units next door and in the same city and threatening to evict them because they asked for repairs. I also note the landlord advertised the rental unit 5 months and 28 days after the Notice's effective date two months after SL's mother-in-law was diagnosed with Covid. The landlord applied to redevelop the rental unit prior to serving the Notice and re-rented the unit for $1,150.00 more per month than the rent paid by the tenants.

Thus, I find that SL failed to prove, on a balance of probabilities, that extenuating circumstances prevented SL and her family from occupying the rental unit from October 01, 2020 to March 31, 2021, the six-month period after the Notice's effective date.

As such, per section 51(2) of the Act, the tenants are entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenants a monetary award in the amount of $22,200.00 (12 x $1,850.00).

As the tenants were successful, I authorize the tenants to recover the filing fee in the amount of $100.00.

In summary, the tenants are entitled to a monetary award in the amount of $22,300.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenants a monetary award in the amount of $22,300.00.

The tenants are provided with this order in the above terms and the landlord must be served with this order. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: May 17, 2022

Residential Tenancy Branch