



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on January 13, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to two Canada Post registered mail tracking numbers, one sent to the town where the Landlord resides, the other sent to a previous address in a different location, as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on January 18, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served the Tenant with his evidence by Canada Post registered mail on January 25, 2022 (the "One Month Notice"). The Landlord provided the Canada Post registered mail tracking number as proof of service; however, the package never reached the Tenant. The Tenant had moved from her first address.

The hearing was adjourned to allow time to get the Landlord's evidence to the Tenant. The RTB emailed the Landlord's evidence to the Tenant on August 11, 2022. At the reconvened hearing date, the Tenant confirmed receipt of the Landlord's evidence.

Issue to be Decided

Is the Tenant entitled to compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy in October, 2014. The fixed term ended one year later, then the tenancy continued on a month-to-month basis. Monthly rent was \$1,503.65. A security deposit of \$725.00 and a pet damage deposit of \$725.00 were collected at the start of the tenancy and both deposits were returned to the Tenant at the end of the tenancy.

The Tenant uploaded 2 Two Month Notices issued by the Landlord. The reasons on both notices were that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice dated December 31, 2020 was March 31, 2021, and the effective date on the Two Month Notice dated January 11, 2021 was March 31, 2021.

The Landlord uploaded a Canada Post mail forwarding receipt showing he purchased this service from Canada Post. The start date is noted as March 15, 2021 and the end date was July 14, 2021. The Landlord uploaded his U-Haul equipment contract beginning March 30, 2021 and its one-way drop off dated April 2, 2021. The Landlord also uploaded copies of his personal cheques which show the address of the rental unit. The Landlord uploaded his Insurance Corporation of British Columbia ("ICBC")

certificate of insurance and vehicle licence which shows his mailing address as the rental unit. Finally, the Landlord uploaded his October 25, 2021 Canada Revenue Agency (the "CRA") Notice of Assessment which, again, shows his mailing address as the rental unit.

The Landlord testified that he moved into the rental unit on April 1, 2021. The Landlord stated that his official retirement date was June 25, 2021. His last payments received from his employer were short term disability payments and vacation pay. The Landlord uploaded copies of bank statements and he stated they show deposits from his employer which represent his short-term disability payments from his job.

The Landlord pointed out that the address on his bank statement in February 2021 to the end of March 2021 show his address from his previous residence. The Landlord said that first bank statement shows his last rent payment for the previous residential property he resided in. The address on the bank statements starting at the end of March 2021 and going forward show the address of the rental unit which is his current address.

The Landlord always paid the BC Hydro bill when the Tenant resided in the rental unit and those bills were directed to his previous address. When the Landlord moved into the rental unit, he changed his address with BC Hydro. The Landlord also uploaded a telephone bill which also shows the address of the rental unit.

The Landlord presented two letters attesting to his residence being the rental unit. One letter was written by a local contractor living in the same area as the rental unit stating that the Landlord had booked his services on April 1, 2021 to assist with unloading the rented U-Haul truck the Landlord had used to move his belongings to the rental unit. The unloading job took about four hours. The second letter was written by the Landlord's new tenants in his basement suite who attest to the Landlord and his roommate both living in the rental unit.

The Tenant believes that the Landlord is not being honest about his reasons of moving into the rental unit. She said he claimed he was retiring but she noted in 2017 he was 57 years old, and she questioned how he could be 65 years old in 2021. She also claimed that he appeared to still be working, and she wondered how he did the commute between the two areas. The Tenant argued that the Landlord told her that his girlfriend and her children were moving in with him, but this did not happen.

The Tenant called the town post office to confirm that the Landlord had picked up her NoDRP package, and the person that was described to her was not her Landlord. The Tenant went to the rental unit in June to pick up mail and said when she spoke with the Landlord, he told her his official retirement date was June 25, 2021 and his short-term disability ran out on June 6, 2021. She noted on November 8, 2021, the Landlord had mentioned to her that he was still working and living in the city he previously lived in. Shortly after this exchange was when the Tenant applied for dispute resolution.

The Landlord's reply was that his work tried to create a teaching position for him because his doctor told him he could go back to work. In the end, his employer said, *'no, you take early retirement'*. After that time, the Landlord said, his employer paid him out. July 9, 2021 was his last payment from his employer which the Landlord said represented what was owed to him and the remainder of his vacation pay.

The Tenant stated that the bank statements the Landlord uploaded were very blurry and hard to read. She does not believe that he is retired. She queried about his teaching job. The Tenant states changing a person's address through Canada Post does not prove he moved to that address.

Analysis

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. The onus to prove their case is on the person making the claim. Pursuant to RTB Rules of Procedure 6.6, I find that in this claim, the onus is on the Landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

RTB Policy Guideline #50-Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when the landlord does not fulfill their legal obligations after ending a tenancy for landlord's use. The Policy Guideline discusses the legislative framework as:

Sections 51 and 51.4 of the RTA require a landlord to pay further compensation to a tenant if the landlord does not prove that they have accomplished the purpose for which the tenancy was ended within a reasonable period or, in some instances, did not use the rental unit for the stated purpose for at least 6 months duration. The director may only excuse

a landlord from having to pay this further compensation if there were extenuating circumstances.

...

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

...

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

The Tenant does not believe that the Landlord used the rental unit for the stated purpose given in the Two Month Notice. That purpose was that the Landlord or the Landlord's spouse would be occupying the rental unit. The effective date of the Two Month Notice was March 31, 2021, and the Landlord testified that he moved into the rental unit on April 1, 2021.

The Landlord ended his employment history being on short term disability although he said his employer tried to create a teaching position for him. Ultimately, the Landlord stated that he did not work after being put on short-term disability. The totality of the Landlord's evidence included transition from his residence in the city to the rental unit, using a U-Haul contract for his move, changes to mailing addresses on personal cheques, ICBC certification and vehicle licencing, CRA notice of assessment, bank statements, BC Hydro, and telephone bills. The Landlord included two letters from personal acquaintances who attested to his relocation

The Tenant claims that the Landlord's bank statements were blurry and hard to read, but I find were not impossible to see the items the Landlord pointed to in his evidence. The Tenant questions the Landlord's age, and does not believe he is 65 years old, and retired, but I find, some people retire before 65 years of age. I find based on the totality of evidence produced by the Landlord, I am satisfied that the Landlord used the rental unit for the stated purpose within a reasonable period after the effective date of the Two Month Notice. I dismiss the Tenant's application without leave to re-apply.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 20, 2022

Residential Tenancy Branch