Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution in which the Tenant requested monetary compensation from the Landlord in the amount of $21,600.00 pursuant to section 51(2) of the *Residential Tenancy Act* (the "*Act*") and to recover the filing fee.

The procedural history of this matter is as follows:

- The hearing originally occurred on July 28, 2020, before Arbitrator Nazareth. She granted the Tenant's Application, found the Tenant entitled to the requested compensation, and made a corresponding Monetary Order.
- The Landlord applied to the B.C. Supreme Court for Judicial Review of the Nazareth Decision.
- By Decision dated November 18, 2020, the Honourable Madame Justice Winteringham set aside the original Nazareth decision and ordered a new hearing.
- On August 26, 2021, the new hearing occurred before Arbitrator Ceraldi. Only the Landlord and his counsel attended. As a result of the Tenant's failure to attend, Arbitrator Ceraldi dismissed the Tenant's Application without leave to reapply.
- The Tenant applied for Review Consideration of the Ceraldi Decision on the basis she was unable to attend the hearing due to circumstances which were both unanticipated and beyond her control.
- Arbitrator Vaugh considered the Tenant's Application for Review Consideration of the Ceraldi Decision. Arbitrator Vaugh granted the Tenant's request and ordered a new hearing.

The new hearing was scheduled before me on December 21, 2021. The hearing did not complete on that date, and was adjourned to August 29, 2022, and again to September 23, 2022, when it completed. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was also assisted by legal counsel, V.G.

At the time of the original hearing, recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. At the time of the reconvened hearing on August 29, 2022, and September 23, 2022, the hearings were recorded.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Landlord's Name

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure. Rule 4.2* of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

At the outset of the hearing the Landlord confirmed the spelling of his surname. I therefore amend the Tenant's Application to properly name the Landlord.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Application concluded on September 23, 2022. This Decision was rendered on November 2, 2022. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings,

conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord pursuant to section 51(2)?

2. Should the Tenant recover the $100.00 filing fee?

Background and Evidence

This tenancy began August 1, 2014. Rent was originally payable in the amount of $1,500.00 and was raised to $1,800.00 by the time the tenancy ended.

The Tenant was served a 2 Month Notice to End Tenancy for Landlord's Use on August 2, 2019. The reasons cited on the Notice were that the Landlord's family member intended to reside in the unit. It was undisputed that the family member referred to in the notice was to be the Landlord's daughter.

The Tenant disputed the Notice and a hearing occurred on October 7, 2019. The Tenant was unsuccessful, and the Notice was upheld. She vacated the rental unit as of October 30, 2019.

In the claim before me, The Tenant alleged that the rental unit was not used for the stated purpose and was instead sold by the Landlord. She therefore sought monetary compensation equivalent to 12 months rent as provided for in section 51(2) of the *Residential Tenancy Act.*

The Landlord argued that the unit was used by his daughter for studying while he prepared it for her occupation. He concedes the unit was listed for sale but argues that this was only due to extenuating circumstances, namely the condition of the rental unit and the impact of the Covid-19 pandemic on his attempts to repair the unit and his daughter's desire to live in the unit. He also noted that the unit was sold more than six months after the tenancy ended.

The Tenant submitted that the Landlord never intended his daughter to live in the unit, rather, his longstanding intention was to sell the unit. She testified that in March 2019 the Landlord informed her that he wanted to sell the rental unit and asked the Tenant to be prepared to move out by the end of summer.

The Tenant said she was suspicious of the Landlord's intentions and asked her neighbours to keep an eye on the unit after she moved out. These neighbours provided letters confirming that no one moved in after her tenancy ended.

The Tenant claimed that the property was listed for sale in March of 2020 and was sold around that time with new owners occupying shortly thereafter.

The Tenant further testified that she went to the rental unit many months after her tenancy had ended, in November of 2019, January of 2020 and February of 2020; at that time, she pressed the unit buzzer, and the buzzer still had her name on it. The buzzer was also still connected to her cell phone at that time. She provided a photo in evidence confirming this.

The Tenant disputed the Landlord's information that he needed to renovate the unit after her tenancy ended. The Tenant stated that there was no damage done to the unit and the Landlord returned the deposit and did not claim there was any damage.

In response to the Tenant's testimony the Landlord testified as follows. He stated that it was his daughter, R.S.'s, intention to move into the unit as she was having conflict with her mother. R.S was going to university at the time and wanted to move to the rental unit to minimize the conflict and to reduce her commute to university. At this time, he issued the 2 Month Notice.

The Landlord stated that his daughter partially moved into the rental unit but never spent the night because of the condition of the rental unit and the repairs that the Landlord was doing. In terms of those repairs, he stated that the appliances needed to be replaced, as with the flooring. He also repainted the unit.

The Landlord confirmed the rental unit was built in 2008. He stated that just before the Tenant moved in the previous tenant destroyed the unit. The Landlord applied to the Residential Tenancy Branch for an Order for compensation and was awarded all the costs of repair of $4,000.00. However, the Landlord could not find the Tenants and therefore was out of pocket without any compensation.

The Landlord stated that he had such a bad experience going through the previous arbitration that he just paid the Tenant her security deposit and decided to do the work himself. He returned her deposit but because he knew that if he did so a day late, he would have to pay her double.

In response to the Tenant's claim that the Landlord wanted to sell the unit, the Landlord stated that it was the Tenant who indicated she was going to move out and buy a rental unit. He denied telling her he wanted to sell the unit in 2019.

The Landlord further testified that a couple of days after the Tenant moved out the Landlord's daughter started going to the unit to study. The Landlord's daughter was at the unit 2-3 times a week to study; sometimes she was there all day, sometimes she was there in the evenings. She never stayed over night because there was no furniture there aside from a small desk and chairs and some snacks. He said he did not want to put in large furniture as it was his intention to replace the flooring.

The Landlord further testified that this arrangement gave his daughter some space from her mother and a place to study during her final exams and resulted in the Landlord's daughter and her mother getting along better.

The Landlord confirmed that in March of 2020 he decided to sell the rental property. He noted that this was the early stages of the Covid 19 pandemic, and he was having problems getting materials due to delays in shipping. This slowed his work renovating the property. The Landlord's work was also delayed as he needed to obtain approval from the strata for the flooring he wished to install. He noted that at this time it was hard to find help with the flooring due to Covid 19, although he finally got approval and help in February of 2020.

He testified that as this time they were still planning to have his daughter move into the unit however, unexpectedly all university classes went entirely online, such that his daughter's commute was no longer an issue. He also noted that due to concerns during the early part of the pandemic his daughter was worried about being isolated at home alone in the condo, and being in close proximity to strangers, particularly in the elevator. He said that "everything changed because of Covid-19" and in fact his daughter "freaked out" about the virus and his whole family was worried about be in contact with others, particularly in the high-rise building in which the rental unit was located. This

was right at the time that Covid-19 was becoming more concerning, and everyone was becoming more protective of each other.

The Landlord testified that he was not prepared to deal with tenants anymore and decided to just sell the rental unit, but the market was almost dead such that it didn't actually sell until September of 2020. He confirmed that no one else lived in the rental unit after the tenancy ended.

In terms of the buzzer, the Landlord stated that everyone had keys, so they never used the buzzer. He stated that he never even checked the buzzer and was unaware the Tenant still had access to the unit.

When the hearing reconvened on August 29, 2022, the Landlord provided additional testimony as to the condition of the rental when the tenancy ended; including,

- The floors were not clean, with staining on the carpet and tiles.
- The walls were damaged and dirty.
- The overhead fan was broken and dirty.
- The window blinds panel was broken.
- The dryer was full of lint and wasn't properly cleaned.
- The paint on the cabinet doors was coming off.
- The inside of the cabinets were stained.
- One of the bathroom fixtures was broken and resulted in damage to the cabinet door.
- The oven wasn't cleaned.
- The fridge was dented.
- One door stopper was pushed right through the wall.
- The bathroom towel rack required replacement.
- The washing machine was full of dirt.

The Landlord reiterated that the repairs were delayed due to difficulty finding help with the flooring, his need to get approval from the strata and the fact the strata was essentially "shut down" because people weren't working as it was the beginning of the Covid-19 pandemic. The material was finally approved and allowed him to install it, however, contractors were also concerned about coming to the unit.

In reply to the Landlord's testimony and submissions the Tenant provided the following additional testimony and submissions.

The Tenant stated that the day she moved out she took photos of the rental unit at the recommendation of the staff she spoke with at the Residential Tenancy Branch. The Tenant also noted that the Landlord did not mention any damage when she moved out, neither did he send her any emails or texts or anything. He also returned the damage deposit and did not file for dispute resolution.

The Tenant also claimed that the Landlord did not mention anything about his daughter using the unit for studying when they were before Arbitrator Nazareth. The Tenant further argued that during the previous hearing the Landlord did not mention extenuating circumstances, because there were none.

The Tenant admitted that in 2016 she was trying to buy a place but reiterated that it was in 2019 the Landlord said he wanted to sell.

The Tenant submitted that the "Covid-19 shut down" started March 17 and argued that everything was normal before that.

The Tenant also argued that it was unusual for the Landlord's daughter to study in an apartment that was under construction.

The Tenant stated that the Landlord regularly ignored the tenancy rules and regulations and took advantage of her ignorance. In this respect the Tenant provided submissions regarding the Landlord demanding a security deposit over the allowable amount and raising the rent in excess of that permitted; she said she was forced to apply for Arbitration at which time she was awarded the excess payments. She noted that he also did not return her security deposit when required and again she had to make an application. Notably, the Tenant did not raise any of these issues during her testimony, nor did the Landlord have an opportunity to respond to these allegations.

The Tenant submitted that the Landlord never mentioned during any prior hearings that his daughter accompanied him to study there. He changed and added stories to his benefit, stories that don't make sense at all as there was no reason for his daughter to study there. She argued that the real intention of the landlord was to renovate and sell the apartment from the beginning. Which he did. And up until March 17, 2022, there was nothing stopping him from moving into the property.

Analysis

The Tenant seeks monetary compensation pursuant to section 51(2) of the *Act* which reads as follows:

> **51** (1)A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
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> (1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
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> (1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
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> (2)Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
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> > (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.
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> (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
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> > (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.

In order to determine whether the Tenant is entitled to compensation pursuant to section 51(2) I must determine whether the Landlord took steps to accomplish the stated purpose for ending the tenancy or whether the property was in fact used for that

purpose. If steps are not taken, or the property is not used for the stated purposes, I must then determine whether *extenuating circumstances* prevented this.
Based on the above, the testimony and evidence before me, and on a balance of probabilities, I find as follows:

I find the Landlord issued the 2 Month Notice to End Tenancy on August 2, 2019. The reasons cited on the Notice were 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).

I accept the Landlord's evidence that his daughter intended to occupy the rental unit to reduce her commute to university and to have some space from her mother, with whom she was in conflict. I also accept the Landlord's evidence that he wished to make some cosmetic repairs and improvements to the property for his daughter. I further accept his evidence that his attempts to make those improvements was delayed by the Covid-19 pandemic, difficulties with obtaining materials and consents from the strata.

The Tenant argues that the Landlord's claim that the rental unit was in need of repairs should not be believed because he returned her deposit when the tenancy ended and did not make an application for compensation for related costs. I disagree. It is entirely within the Landlord's discretion to pursue compensation, or let it be. Sadly, many landlords are disheartened by the experience of being landlords and having their property damaged by tenants. It is all to often the case a landlord will obtain an order for compensation and then have no possibility of recovering the funds. I accept this Landlord's testimony that when the tenancy ended, he decided to simply repair the unit himself, on his time off, and at a minimal cost. I also accept his testimony that he simply decided not to pursue any compensation from this tenant. This does not make him less credible.

In any case, and based on the evidence before me, I find the Landlord did use the property for the stated purpose. While the Landlord's daughter did not reside in the unit, she used it to study and have a break from the conflict with her mom. There is no dispute that the rental unit was not occupied by others. The Landlord did not try to re-rent it, rather he spent his time repairing it and preparing it for his daughter.

Even in the event I am incorrect in the above findings, I am satisfied extenuating circumstances exist which should relieve the Landlord of paying compensation to the Tenant. The timing of the end of this tenancy and the Landlord's daughter's intention to

move into this unit coincided with the very early days of the Covid-19 pandemic. While it is easy to look back now and judge people's decisions and behaviour with the benefit of hindsight, the fact is at the time the Landlord was trying to prepare the unit for his daughter, no one knew how long this pandemic would last or how much at risk everyone really was. I accept the Landlord's testimony that his daughter, and his family were concerned about her being in an elevator with strangers. At that time, the news was very dire in terms of overflowing hospitals and resource shortages. Families were drawn closer together as health professionals recommended we limit contact and stick to our "bubbles". It is entirely reasonable that the Landlord's daughter had second thoughts about being in the rental unit all by herself and away from her family. It is also entirely understandable that this pandemic may have brought this family closer together and reduced the conflict which prompted the Landlord's daughter to want to move out.

I am not persuaded by the Tenant's arguments that this Landlord was in the habit of ignoring tenancy laws. Notably, the Tenant did not raise this issue during her testimony and only did so in closing submissions. However, even in the event I was concerned about the Landlord's ability to honour his obligations as a landlord, which I am not, I find that to be of no consequence to the decision I have made.

I find pursuant to section 51(3) the Landlord is excused from paying compensation to the Tenant due to extenuating circumstances which prevented the Landlord's daughter from moving into the rental unit when the tenancy ended.

For these reasons I dismiss the Tenant's claim for compensation pursuant to section 51 of the *Act.* I also dismiss the Tenant's request to recover the filing fee.

Conclusion

The Tenant's application for compensation is dismissed in its entirety. The Decision and Order of Arbitrator Nazareth dated July 28, 2020, are hereby set aside.

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: November 2, 2022

Residential Tenancy Branch