Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

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

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property (the "Notice"), pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Amendment

In the hearing the landlord testified to the correct spelling of his first name. The tenant used the shortened version of the landlord's first name in this application for dispute

resolution. Pursuant to section 64 of the *Act,* I amend the tenant's application to state the landlord's full first name.

Preliminary Issue- Service

The tenant testified that the landlord was served with her application for dispute resolution and first evidence package via registered mail on April 27, 2022. The landlord testified that he received the above package on May 1, 2022. I find that the landlord was served with the above evidence in accordance with section 89 of the *Act.*

The tenant testified that she served the landlord with her second evidence package on November 30, 2022 via registered mail. The landlord testified that he received the above package on December 5, 2022 and did not have enough time to review and respond to the tenant's second evidence package.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) state that evidence must be received by the respondent and the Residential Tenancy Branch directly not less than 14 days before the hearing.

The landlord received the second evidence package on December 5, 2022, 13 clear days before this hearing. I find that the tenant's second evidence package was served late, contrary to section 3.14 of the *Rules* and that this late service resulted in the landlord being unable to fairly review and respond to that evidence. The tenant's second evidence package is therefore excluded from consideration.

The landlord and the tenant agreed that the landlord personally served the tenant with the landlord's evidence on December 9, 2022. The landlord's evidence was uploaded to the Residential Tenancy Branch on December 13, 2022 and December 15, 2022.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find that even though the landlord's evidence was served on the Residential Tenancy Branch late, because it was served on the tenant more than 7 days before this hearing, it will be accepted for consideration. I note however, that the landlord mailed to the RTB video files which were oversized and were not in allowable file formats. It is the

landlord's responsibility to provide his evidence in allowable sizes and formats. The evidence served on the RTB that does not meet the size and format restrictions were not uploaded and have not been considered.

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states:

> Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Both parties were advised in the hearing that they are required to present their evidence. I decline to consider evidence that was not presented, in accordance with Rule 7.4 of the *Rules.*

Preliminary Issue- Jurisdiction

The landlord testified that he was never aware that tenancies were governed by legislation and that the *Act* infringes on his ability to freely contract.

The landlord testified that he never considered the verbal agreement he had with the tenant to be a tenancy agreement and considered it part of the tenant's employment. The landlord testified that had he known the *Act* would apply, he would never have entered into the agreement with the tenant.

The landlord testified that he rented the subject rental property to the tenant at a reduced rate because the tenant agreed to: act as security for his marijuana grow operation on the property, help trim the marijuana plants, and feed the chickens.

The tenant testified that she never worked for the landlord and that the only extra thing she agreed to do was to keep the gates locked and to always have someone home.

Both parties testified that rent at the start of this tenancy was $900.00 per month due on the first day of each month. Both parties agree that at the end of this tenancy rent was $1050.00 per month, due on the first day of each month.

Both parties agree that the tenant paid the landlord a security deposit. Both parties agree that the subject rental property is a house and that the tenant had exclusive

possession of the house; except for the basement which was common property used by both the landlord and the tenant.

Section 2(1) of the *Act* states

> **2** (1)Despite any other enactment but subject to section 4 *[what this Act does not apply to]*, this Act applies to tenancy agreements, rental units and other residential property.

A landlord/ tenant relationship is not precluded by the presence of an employee/employer relationship, the two are not mutually exclusive and can occur simultaneously, otherwise, the *Act* would not have a provision, section 48(3) of the *Act,* to end a tenancy due to end of employment.

I find that whether or not there was an employer/employee relationship between the parties, there was a verbal tenancy agreement, in which the tenant paid the landlord a set amount of rent for exclusive possession of the main portion of the house and for which the tenant paid a security deposit. I find that the landlord's ignorance of the *Act* does not diminish its applicability to this tenancy. I find that I have jurisdiction to hear this dispute.

The landlord's written submissions state:

> In the 400 some pages of rules there are references where the RTB Does Not Apply and I belie this to be the case. Ie license to occupy

Residential Tenancy Branch Policy Guideline #9 (PG # 90) states:

> Tenancy agreement is defined in the *Residential Tenancy Act* (RTA) as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, **and includes a licence to occupy a rental unit.**
>
> **[Emphasis added]**
>
> ….
>
> Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

I find that the tenant and the landlord had a tenancy agreement in which the tenant paid the landlord monthly rent for exclusive possession of the main portion of the house. I find that the tenant did not have a license to occupy but did have a verbal tenancy agreement. In any event, as set out in PG #9, event if the tenant had a license to occupy, the *Act* would apply. I find that I have jurisdiction to adjudicate this claim.

Issues to be Decided

1. Is the tenant entitled to a Monetary 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*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

Both parties agree that this tenancy started on September 1, 2019 and ended on June 30, 2021.

Both parties agree that the landlord personally served the Notice on the tenant's daughter on April 30, 2021. The tenant testified that she received the Notice on April 30, 2021.

The Notice was entered into evidence, is signed by the landlord, is dated April 30, 2021, gives the address of the rental unit, states that the effective date of the notice is June 30, 2021, is in the approved form, #RTB-32, and states the following grounds for ending the tenancy:

> The rental unit will be occupied by the father or mother of the landlord or landlord's spouse.

During the hearing the landlord had some difficulty setting out his position and frequently referenced that his position was set out in his signed statement that he

entered into evidence and the signed statement of his sister. In this decision I will reference both the landlord's testimony and the signed statements entered into evidence to ensure that the landlord's position is accurately recorded.

The landlord's written submissions state that before he served the Notice on the tenant, it was his intention to sell the subject rental property and that in the beginning of April 2021, he offered the subject rental property to the tenant for sale but the tenant was unable to afford it. This testimony was not disputed by the tenant.

The landlord testified that he served the Notice because his elderly mother, who lives in a different city than the landlord and the subject rental property, lost her doctor and it was not clear if she would need to go into long term care. The landlord testified that through discussions with his family, he decided to move his mother into the subject rental property because he and his sister live in the same city as the subject rental property and could assist in taking care of her.

The landlord's written submissions state that after the tenant moved out:

> …the house sat mostly vacant other than workers for July and most of August. I did extensive changes to the exterior and landscaping of the property as well as repairing and renovating the residence due to the damages caused by [the tenant] and her friends. This was also if you remember during the height of COVID and I had to make sure everything was suitable for my mom's living conditions…

The landlord testified that the tenant left holes in walls of the subject rental property and that the tenant's cat damaged the walls. The landlord testified that the subject rental property required drywall repair, painting and carpet cleaning. The landlord entered into evidence a video of the inside of the subject rental property in which wall damage can be seen.

The tenant testified that she did not damage any of the walls and that all of the wall damage seen in the videos were there when she moved in or were from regular wear and tear.

Further testimony regarding damage to the subject rental property was provided; however, I have not included it as it is not relevant to the current claim.

The landlord's sister signed a written statement which states:

> ….At the time in question, April 2021, our mother was receiving daily nursing care from multiple sources which were very costly. What changed at this point Was that her doctor suddenly sold his practice in Victoria. This was earth shattering for us as he had been one of her main medical advocates since her decline had started. Unfortunately, the physician taking over the practice was not wanting to take on all the patients and our mother was left without a family GP.
>
> Due to her multiple, complex, medical conditions our mother needs to be monitored regularly and without family, or a family doctor, in the city where she lives, we were faced with relocating her closer to us. Originally, we looked at her moving into as assisted living facility, but this proved to be extremely expensive with many challenges due to COVID….Without a family doctor we needed to do something quickly to help our mom.
>
> At first, my brother spoke with his tenant about her purchasing [the subject rental property] in order to fee up some money to facilitate my mothers need for additional care. Unfortunately, the tenant was unable to qualify for a mortgage. He then made the decision to give his tenant notice in order to move our mother into [the subject rental property]. With her living in [the subject rental City] I would be able to attend the home daily to ensure her medical care and he would be able to visit her and check on her daily as well.
>
> Our mother didn't really want to leave her home of over 30 years and relocate to [the subject rental City], so, on her behalf, I continued to petition the new doctor in Victoria to take her on as a patient as were her nurses through Home and Community Care. At the same time, I was exploring other options closer to us for her ongoing geriatric needs because we knew we would need additional support for her care once she relocated to [the subject rental city].

The landlord's written submissions state: "In late August 2021 it had became clear that mom was going to be able to continue with this new doctor situation we had found. (Please see letter form my sister [name redacted], attached). They were able to shuffle around patients and take mom on an emergency basis.

The landlord testified that once his mother found a doctor in the city in which she resides, it was easier to leave her where she was that to move her to the subject rental

city and so his mother did not move into the subject rental property. The landlord testified that in August 2021 he met a contractor with whom he entered into a one year fixed term rental agreement for the subject rental property starting September 1, 2022 at a rental rate of $3,300.00 per month.

Analysis

Section 51 of the *Act* states:

> **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.
> (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.
> (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.
> (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
>
> (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.
>
> (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.

Residential Tenancy Policy Guideline # 50 states:

> 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). 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.
>
> Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

Based on the testimony of the landlord, the landlord's signed statement and the landlord's sister's signed statement, I find that the landlord's mother did not move into the subject rental property. I find that the rental unit was not used for the purpose stated on the Notice for a period of at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. Pursuant to section 51(2) of the *Act,* I find that the tenant is entitled to 12 months' rent compensation under the *Act,* unless, pursuant to section 51(3) of the *Act,* extenuating circumstances prevented the landlord from using the rental unit for the stated purpose for at least 6 months' duration.

Residential Tenancy Branch Policy Guideline #50 states:

> An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing

the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements.

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

The landlord testified that once his mother found a new doctor, it was easier leaving his mother where she was than moving her into the subject rental property. The landlord's sister's written statement says that their mother preferred not to move once a new doctor was obtained. Based on the landlord's written submissions, the landlord's sister's written submissions, and the testimony of the landlord, I find that when a new doctor for the landlord's mother was found, the landlord and the landlord's mother changed their minds about the landlord's mother moving into the subject rental property. I find that this was a choice and was not an extenuating circumstance. I find that nothing prevented the landlord's mother from moving into the subject rental property, but when an option to stay in her home arose, the landlord's mother chose to stay and chose not to move into the subject rental property. As stated above, changing one's mind is not an extenuating circumstance.

I find that since no extenuating circumstances arose that prevented the landlord's mother from moving into the subject rental property, and the landlord's mother did not move in, pursuant to section 51(2) of the *Act,* the tenant is entitled to 12 months rent totalling $12,600.00.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the $100.00 filing fee for this application for dispute resolution from the landlord, in accordance with section 72 of the *Act.*

Conclusion

I issue a Monetary Order to the tenant in the amount of $12,700.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. 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: December 20, 2022

Residential Tenancy Branch