Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, RPP, FFT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for damages or compensation pursuant section 67;
- An order for the return of personal property pursuant to section 65; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and both tenants attended the hearing. The landlord acknowledged service of the tenants' Notice of Dispute Resolution Proceedings package and the tenants acknowledged service of the landlord's evidence. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue
The tenants acknowledged that the landlord in this hearing was not their landlord in 2019 and 2020. Their claim seeking gas and hydro utilities during this period would not apply to this person and the tenants agreed that this portion of their claim should be withdrawn.

Issue(s) to be Decided
Are the tenants entitled to compensation?
Can the tenants recover her property?

Can the tenants recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant SC gave the following testimony. The tenancy began in September of 2009 with a previous landlord. The rental unit is the upper unit of a single family house with another lower unit that had been occupied by unrelated occupants. The tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use by the previous landlord and the reason for ending the tenancy stated:
All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The landlord in this hearing was named as the purchaser and the tenants acknowledge receiving a BC Real Estate Association form advising them of the purchaser's name. The effective date of the notice to end tenancy was July 31st however the tenants vacated the rental unit on July 21st.

The tenants surmise that the landlord did not move into the rental unit after the tenancy ended. They drove by the house several times and noticed work being done. They approached the house one day to see if they could retrieve some plants in the yard and the people who answered the door advised the landlord did not live there and provided the landlord's phone number for them to call. The tenants point to the utility bills provided as evidence by the landlord which indicates to them that the house was vacant.

The eviction took place during the pandemic, and it disrupted their lives. When the eviction notice was served, the tenant got shingles due to the stress and the tenant also broke her ankle while answering the door. The tenants seek $20,000.00 for pain and suffering. When I asked the tenants how they arrived at this figure, the tenants stated

they made the figure up and have no means to calculate it. The effect of the eviction will impact them forever and they want to stop landlords from doing it.

Regarding moving expenses, the tenants justify seeking the cost of the moving because the landlord illegally evicted them.

In her application, the tenant seeks to have a chance to take some of the plants from the garden that she tended for 12 years because of the hasty unplanned nature of the displacement. No testimony was heard regarding this aspect of the tenant's application.

The landlord gave the following testimony. He took possession of the rental unit and moved into it right after the tenants left. He undertook renovations to the house while he lived there and did them little by little due to budgeting. He also took in roommates and their written statements were provided as evidence. One roommate states he moved in on August 21st and another roommate indicates he moved in on September 3rd.

The landlord points to utility bills he provided as further evidence of him living in the unit. The fortis bill for natural gas shows a gradual increase in the amount of gas he used while living in the unit; the BC Hydro bills indicate the same gradual increase. Lastly, the TELUS bill indicates he obtained internet at the house. The first bill for the internet is dated September 13, 2021.

The landlord testified that he and his roommates started renovating the unit while living in it. He does not work from home, and the landlord is doing the work himself. When the tenants asked why the landlord accepted the registered mail at a different address from the rental unit, the landlord testified it was because the other address is his parents and he uses it as a mailing address. He picked up the mailing at the post office after receiving a notice of missed delivery from Canada Post.

Analysis

Section 51 of the *Act* states a tenant who is served with a Notice to End Tenancy for Landlord's Use ("notice") pursuant to section 49 is entitled to compensation in an amount equivalent to 12 times the monthly rent if 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 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. The onus is on the landlord to prove that they accomplished the purpose

for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

In the matter before me, I find the landlord has provided sufficient evidence to satisfy me he occupied the rental unit for a period of at least 6 months. I turn specifically to the TELUS bills indicating the landlord had internet access set up in the house. The first bill for that access was dated September 13th which reasonably allows me to conclude the internet was likely connected sometime before that. In most situations where a landlord re-rents a rental unit, the internet is usually connected by the tenants, not the landlord. I find that it would be unreasonable for the landlord to set up internet in a house where the landlord does not live.

I also note that the Fortis and BC Hydro bills were opened in the landlord's name shortly after the tenancy with these tenants ended. This further lends credence to the landlord's position that he was occupying it. Lastly, while the landlord did not call his roommates to testify, I accept their statements that at least one of them had begun to occupy the house together with the landlord as of August 21, 2021. I find the landlord has discharged his onus to prove to me he used the rental unit for its stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice to end tenancy.

Aggravated damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the **deliberate or negligent act** or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.
They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

Earlier, I determined that the landlord had fulfilled his obligation to occupy the house he purchased; I do not find any element of highhandedness in doing so. As the owner of the house, the landlord had the right and entitlement to take over occupancy of it. This has occurred. I find the tenants have provided insufficient evidence to satisfy me the landlord has conducted himself in any way to bring about any cause of action under aggravated damages. Nor can I attribute the tenant's shingles or broken ankle directly to the behaviour of the landlord. Consequently, the claim for aggravated damages is dismissed.

Likewise, the tenants' claim seeking moving expenses is dismissed. A landlord is not obligated to pay for a tenant's moving expenses when the tenancy is ended in accordance with the Act. To be clear, I find the tenancy ended in accordance with sections 44(1)(a)(v), after the tenants were properly served with a valid 2 Month Notice to End Tenancy for Landlord's Use.

Lastly, the tenants sought an order that they could return to the landlord's property to retrieve some plants. The tenants testified that they vacated the rental unit on July 21st, 10 days before the effective date of the notice to end tenancy. I find the tenants had the full 2 months to take whatever belongings they wanted prior to the tenancy ending and failed to take advantage of it. I find no reason why I should allow the previous tenants of the property to enter the property and dig up plants. I can give no reassurance to the landlord that the landscape of the home will not be damaged by the former tenants if they were to return and take the plants. This portion of the tenant's application is likewise dismissed.

As the tenant's application was not successful, the tenant is not entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

This application is dismissed without leave to reapply.

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: March 17, 2023

Residential Tenancy Branch