Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing was scheduled to hear a tenant's monetary claim against the landlord for compensation payable where a landlord ends the tenancy for landlord's use and does not use the rental unit for the stated reason.

Both the landlord and the tenant appeared for the hearing. The landlord was also represented by legal counsel. The landlord's daughter was also present at the start of the hearing and was excluded with instructions to wait to be called to testify; however, the landlord's daughter was not called to testify.

The hearing was held over two dates and an Interim Decision was issued on October 28, 2022. The Interim Decision should be read in conjunction with this decision. As seen in the Interim Decision, I had ordered the tenant to re-serve his evidence to the landlord. At the start of the reconvened hearing, I confirmed the tenant accomplished this. Considering the landlord received the tenant's evidence during the period of adjournment, I permitted the landlord to provide additional evidence during the period of adjournment. Neither party took any further issue with respect to service of materials and I have admitted the evidence of both parties and I have considered all of it in making this decision.

On another procedural note, this decision is being issued more than 30 days after the hearing concluded. Section 77(1)(d) of the Act provides that the Director must give a written decision to the parties within 30 days after the proceeding concludes; however, section 77(2) also contemplates that decisions may be issued more than 30 days later and provides the following:

(2)The director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1) (d).

Issue(s) to be Decided

1. Is the tenant entitled to compensation equivalent to 12 months of rent from the landlord, as claimed?
2. Award of the filing fee.

Background and Evidence

The tenancy started in September 2018. The tenant was required to pay rent of $3000.00 on the last day of every month. The tenancy ended on January 30, 2022.

The tenancy came to an end because the landlord served the tenant with a notice to end tenancy on October 8, 2021. The landlord's notice reads, in part:

> *It is a notice to let you know that we are going to move back to our condo Suite [address of property]. So here we are giving you 3 months notice. That means, we re moving back to our home on Jan 9, 2022.*
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> [Reproduced as written with address removed by me for privacy purposes]

The tenant responded to the landlord seeking to end the tenancy on January 30, 2022. The landlord agreed. The parties were also in agreement that the tenant may withhold rent for January 2022 as compensation for the landlord ending the tenancy for landlord's use of property.

The landlord was out of town when the tenancy ended so the parties met at the unit on February 11, 2022 where cleaning was discussed and the tenant returned the keys. The landlord refunded the full amount of the security deposit to the tenant on February 14, 2022.

On February 16, 2022 the rental unit was listed for sale. The tenant provided a copy of the listing advertisement showing it was listed on February 16, 2022. The advertisement does not show any photographs of the interior of the rental unit.

The landlord submitted that that it was her intention for her and her daughter to move into the rental unit when she issued the notice to the tenant; however, after the tenancy ended the landlord determined that repairs were needed. The landlord tried to find contractors to perform the repairs but it was difficult so the landlord decided to list the property for sale.

The landlord submitted that she did move into the rental unit in "April 2022 or May 2022" In her oral testimony, the landlord testified that was unable to live in the unit because of the repairs that were required and that she could not take a bath; however, the landlord also testified that she made repairs herself. In her written submissions, the landlord stated the tenant "destroyed" the rental unit but that she lived with the horrible condition. The landlord provided an invoice showing repairs were made to appliances in September 2022.

The tenant was of the position that there was a discussion about cleaning after the tenancy ended but nothing was said about damage. The tenant was of the position the unit was liveable and not damaged. The tenant pointed to the landlord issuing him a full refund of his security deposit in support of his position.

The tenant submitted that the rental unit was taken off the sales market the same day the tenant's Application for Dispute Resolution was recorded as being delivered by Canada Post, in June 2022. The tenant is of the belief it was taken off the market because he filed this claim against the landlord. The landlord claims she did not receive the registered mail despite the information recorded by Canada Post.

The landlord testified that she decided that she would not sell the unit because she "loves" it. The landlord explained that she had entered into a listing contract so the rental unit remained listed but that she did not sell it and she still own the unit. The landlord testified that after moving into the rental unit she has continued to reside in the rental unit. The landlord provided a copy of a title search of the property which shows the landlord purchased the property in 2018 and that she continues to own it as of February 2023.

The landlord provided documentary evidence to demonstrate she has resided in the rental unit.

- A BC Hydro payment notification was issued to the landlord for a billing on May 2, 2022. The bill is for $29.
- Receipts showing the landlord purchased a phone and various pieces of furniture for the rental unit in early to mid June 2022.

- Photographs that show what appears to be the landlord residing in the rental unit along with personal possessions. The only dates attributable to the photographs were the dates the photographs were sent via email, in October 2022.
- Several Uber receipts to show that the landlord comes and goes from the unit. Most of the receipts were dated in October 2022 but two were issued in late May 2022.
- An insurance document showing the landlord and her daughter purchased travel insurance for a trip they were taking from April 29, 2022 through May 4, 2022 and the mailing address is listed as being the rental unit.

Included in the tenant's evidence was a copy of an email the tenant sent to the landlord on February 11, 2022. In the email, the tenant describes how he has placed the landlord's mail that was in the mailbox at the front desk, as requested by the landlord.

The tenant testified that he does not doubt that the landlord eventually moved into the rental unit and that she continues to live there. However, the tenant argued that in listing the rental unit for sale only days after they performed the move-out inspection points to the landlord not having a good faith intention in ending his tenancy so that she could move in and that the rental unit was taken off the sales market after his claim was delivered registered mail.

The landlord argued that it was her intention for her and her daughter to move in but the rental unit was not liveable when the tenancy first ended and out of frustration, she listed it for sale. The landlord did move into the rental unit and did not sell the unit. The landlord's daughter moved to another city to attend school.

Analysis

With respect to the tenant's claim against the landlord, I provide the following findings and reasons.

Section 49 provides that a tenancy may be ended where the landlord or close family member of the landlord intends to occupy the rental unit. In order for a landlord to end a tenancy, the landlord must give the tenant a Two Month Notice to End Tenancy for Landlord's Use of Property, in the approved form.

In this case, the tenant was not served with notice in the approved form. Nevertheless, the Act provides that a landlord and tenant cannot avoid the Act. Section 5 of the Act provides:

> **5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

The landlord communicated to the tenant in her notice that the reason for requiring the tenant to vacate the rental unit was so that the "we", being the landlord and her daughter, may move into the rental unit. The landlord gave the tenant at least two months of advance notice and the tenant obtained the last month of tenancy free of paying rent. I find the reason for ending the tenancy, as stated in the landlord's notice, is a reason permitted under section 49 of the Act, the amount of advance notice given is consistent with the timing requirements of section 49, and the compensation given to the tenant (one free month of rent) is also consistent with the compensation payable to a tenant where a tenant receives a notice to end tenancy under section 49 of the Act. Therefore, I find the landlord cannot avoid the Act, and its obligations, solely on the basis the notice given to the tenant was not in the approved form and I find the tenancy ended under section 49 of the Act.

Where a tenancy is ended under section 49 of the Act, the landlord is obligated to pay compensation to the tenant, as provided under section 51 of the Act.

The tenant has already received the compensation payable under section 51(1) which was the equivalent of one month's rent that he obtained by withholding rent for January 2022.

The application before me is for additional compensation equivalent to 12 months of rent. This compensation is provided for under section 51(2) of the Act. Section 51(2) provides as follows:

> (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
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> (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**.

[My emphasis added]

Subsection (3) provides a mechanism for the Director, as delegated to an Arbitrator, to excuse the landlord from having to pay the compensation provided under section 51(2) if "extenuating circumstances" prevented the landlord from accomplishing the stated purpose within a reasonable amount of time after the tenancy ended or using the rental unit for the stated purpose for at least six months.

The spirit of the Act is to preserve existing tenancies. As such, the Act provides very specific and limited circumstances when a landlord may end a tenancy. The Act also provides very serious consequences for landlords who state they are ending the tenancy for landlord's use of property but then does not fulfil the stated purpose after the tenancy ends within a reasonable amount of time or for a minimum of six months. The consequence for the landlord is the requirement to pay the tenant additional compensation under section 51(2) and it is a significant financial consequence intended to create a real deterrence to ending a tenancy for false reasons and/or ulterior motives.

In this case, the landlord submitted that she moved into the rental unit in "April 2022 or May 2022"; however, I find the most compelling evidence as to the timing of the landlord residing in the rental unit are the receipts for the purchase of household furnishings which was done in early to mid June 2022. I make this finding considering the following factors:

- Although the landlord presented an insurance document issued in late April 2022 with the rental unit address on it, I note that in the tenant's email of February 11, 2022 the tenant informs the landlord that he has left mail that was sent to the landlord at the rental unit at the building's front desk. As such, I find it likely the landlord has used the rental unit address as a mailing address prior to moving into the rental unit and the rental unit address appearing on the travel insurance document is not determinative.

- The landlord provided a notification from BC Hydro for a hydro bill issued to her on May 2, 2022; however, I am of the view that even a vacant unit listed for sale typically has electricity. I also note that the amount of the bill is quite low and the landlord did not provide copies of bills for several months in an effort to show when consumption increased due to her occupancy of the rental unit as her residence. As such, I find the May 2, 2022 hydro bill notification is not persuasive evidence the landlord was residing in the unit prior to May 2, 2022.

- The landlord provided several Uber receipts; however, I note there are many more receipts issued in October 2022 when she was actually residing in the rental unit and there were no Uber receipts pre-dating late May 2022, when there were only two. Accordingly, I find the Uber receipts demonstrate the landlord was coming and going to the rental unit in late May 2022, at the earliest.

- I note that it was in June 2022 that the landlord purchased a telephone and furniture for the rental unit and June 2022 is also the time when the rental unit was no longer listed for sale. I am of the view that acquiring furniture for the rental unit is more indicative of the rental unit actually being occupied by the landlord.

Given the above, I find it more likely than not that the landlord moved into the rental unit in June 2022. The landlord provided documentary evidence that as of October 2022 she was still residing in the rental unit and during the hearing the landlord testified that she continues to occupy the rental unit, and the tenant did not dispute that. Accordingly, I find the issue before me to grapple with is whether the landlord moved into the rental unit "within a reasonable period after the effective date" of the notice.

Residential Tenancy Policy Guideline 50 provides information and policy statements with respect to compensation payable where a tenancy is ended by the landlord. Below, is an excerpt that deals with determining what is a "reasonable" period of time to fulfill the stated purpose:

> **Reasonable Period**
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> A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Considering the tenancy was set to end on January 30, 2022 and I find the evidence points to the landlord moving in to the rental unit in June 2022, I find there was a four

month delay in the landlord moving into the rental unit. I consider the four month delay to be significant. In hearing from the landlord, she explained the reason for the delay was due to repairs being required and the difficulty in finding contractors to make the repairs. However, I find the landlord's own evidence concerning repairs to conflicting and unclear. As I captured in the Background and evidence section of this decision, the landlord indicated the rental unit was not liveable by her and "destroyed" by the tenant; yet the landlord also testified that she made repairs herself and lived with its condition, and the only receipt she provided was for appliance repairs made in September 2022. Also of consideration is the tenant disputed that the rental unit was damaged or not liveable, pointing to a conversation he had with the landlord regarding cleaning only and a full refund of his security deposit. Therefore, I find I am unsatisfied by the evidence before me that there was a need for significant repairs and that such repairs precluded the landlord from moving into the rental unit in a timely manner.

Considering all of the evidence before me, I find the most logical explanation for the four month delay in moving into the rental unit coincides with the period of time the landlord had the rental unit listed for sale. Therefore, I am of the view that the primary reason the landlord did not move into the rental unit for a number of months is because she had it listed for sale.

Ending a tenancy so that a unit may be vacant and listed for sale is not permitted under the Act. I find the landlord's ending of the tenancy, followed by an attempt to sell the rental unit for a number of months before moving in, constitutes an unreasonable delay in moving in. Therefore, I find the tenant is entitled to compensation payable under section 51(2)(b) of the Act, which is $36,000.00 [$3000.00 x 12 months].

The landlord did not claim that any "extenuating circumstances" prevented her from moving into the rental unit although I proceed to considered whether the landlord's assertion of needing to make repairs to the rental unit constitutes an "extenuating circumstance". As I stated above, the lanldor dprovided inconsistent and disputed evidence that the rental unit was damaged and, in my opinion, the evidence does not support that significant repairs were needed to make the unit suitable for occupation and I do not excuse the landlord from having to pay the additional compensation to the tenant.

Since the tenant was successful in this application, I further award the tenant recovery of the $100.00 filing fee from the landlord.

Provided to the tenant with this decision is a Monetary Order in the sum of $36100.00 to enforce against the landlord.

Conclusion

The tenant was successful in this application and has been provided a Monetary Order in the amount of $36100.00 to enforce against the landlord.

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: April 11, 2023

Residential Tenancy Branch