



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

In this application for dispute resolution, the tenant applied on June 27, 2022 for:

- compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose; and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Is the tenant entitled to compensation because the landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose?
- 2) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered the testimony and presented documentary evidence of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed that the tenancy began on July 1, 2015 and ended on October 1, 2021, rent was \$1,340.00, due on the first of the month; and the landlord returned the tenant's security deposit.

A copy of the Two Month Notice to End Tenancy for Landlord's Use of Property, dated August 31, 2021, is submitted as evidence and indicates an effective date of October 31, 2021. It states the landlord or landlord's spouse will occupy the rental unit.

The landlord submitted that after the tenant vacated on September 30, 2021, the landlord moved into the unit at the end of March 2022, after cleaning and renovations were completed, a period of almost six months. The landlord testified they were not able to move into the unit right away because the tenant had left it in bad condition. The landlord's March 9, 2023 affidavit notes they did the following renovations and cleaning:

- replaced the carpeting in the whole house, as it was "beyond cleaning"
- "got the whole bathroom settings changed which included installation of new toilet seat, new tub, new tiles, new plumbing as it was all blocked and new washbasin"
- replaced the kitchen plumbing "due to blockage"
- had the house professionally cleaned as it smelled strongly of cigarettes

The landlord testified that they permitted a former tenant to temporarily stay in the home until March 2022, without charging him rent, as he recuperated from major surgery and because his unit had flooded. From the former tenant's affidavit it appears he moved into the subject unit in November 2021. The landlord's affidavit states that the former tenant was also staying with the former tenant's brother.

Submitted as evidence is an affidavit from a tenant who lives in the basement of the subject unit. It states that after the subject tenant vacated, the unit "was very dirty and needed clean up and renovations." The required renovations are not specified in the affidavit.

The tenant testified that she left the unit clean and undamaged, and that the landlord returned her security deposit. The tenant submitted as evidence photos taken at the end of the tenancy; no cleaning or damage issues are visible in the photos.

The tenant testified that she did not know anything about blockages in the kitchen and bathroom plumbing, and that there were no plumbing issues at the end of the tenancy.

Analysis

Section 51(2) of the Act states:

(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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49(6)(a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[Policy Guideline 2A](#): *Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member* provides that:

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.

Section 51(3) permits an arbitrator to excuse a landlord if, in the arbitrator's opinion, extenuating circumstances prevented the landlord from:

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The effective date of the Two Month Notice was October 31, 2021, and the landlord testified that he moved into the unit at the end of March, 2022, a period of almost five months. The parties agreed that the tenant had vacated the unit on September 30, 2021, which gave the landlord an additional month with the unit empty.

The landlord testified they were not able to move into the unit right away because the tenant left the unit dirty and in need of repair, including plumbing blockages in the

kitchen and bathroom. The tenant submitted photos from the end of the tenancy showing the unit clean and in good repair, and the tenant testified there were no plumbing issues at the end of the tenancy. The landlord did not explain why it took approximately six months to complete the cleaning, renovation, and repair work, or why they were not able to reside in the unit until all of the work had been completed.

The landlord testified that as a former tenant had experienced flooding and a serious health problem, the landlord had permitted the former tenant to reside in the unit, without paying rent, until the work was done in March 2022. The landlord submitted that the former tenant had also been staying with the former tenant's brother. The landlord did not explain why the former tenant could not have stayed in the unit along with the landlord and his family, or why the former tenant could not have stayed exclusively with his brother.

Based on the evidence before me, on a balance of probabilities, I cannot find the landlord experienced circumstances beyond his control that prevented him from occupying the rental unit within a reasonable period after the effective date of the Two Month Notice.

I find the landlord has not met his obligation under the Act, so pursuant to section 51(2), owes the tenant 12 times the monthly rent of \$1,340.00 payable under the tenancy agreement: \$16,080.00.

The tenant is entitled to a monetary award in the amount of \$16,080.00 for 12 times the rent.

Section 72 of the Act gives an arbitrator the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in her application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

The tenant is entitled to a monetary order in the amount of \$16,180.00, comprising the filing fee and 12 times the rent (100 + 16,080).

Conclusion

The tenant is granted a monetary order for \$16,180.00. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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