Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

This hearing dealt with the tenants' application, filed on July 15, 2022, pursuant to the *Residential Tenancy Act ("Act")* for:

- a monetary order of $5,750.09 for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- a monetary order of $16,200.00 for compensation because the tenancy ended as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property, dated March 25, 2022 and effective June 1, 2022 ("2 Month Notice"), and the landlords have not complied with the *Act* or used the rental unit for the stated purpose, pursuant to section 51; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The two landlords, landlord DB ("landlord") and "landlord EC," the landlords' lawyer, and the two tenants, tenant SB ("tenant") and "tenant AB," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 62 minutes from 1:30 p.m. to 2:32 p.m.

The landlords intended to call their daughter, "witness SB," who was excluded from the outset of this hearing. She left the hearing at 1:33 p.m. She did not return to testify. At the end of this hearing, the landlords and their lawyer affirmed that they did not want to call witness SB to testify at this hearing. The tenants did not object to or dispute same.

All hearing participants confirmed their names and spelling. The landlords' lawyer and the tenant provided their email addresses for me to send copies of this decision to both parties after the hearing.

Both landlords confirmed that they co-own the rental unit. The landlord provided the rental unit address. Both landlords confirmed that their lawyer had permission to represent them at this hearing and identified him as their primary speaker.

The tenants identified the tenant as the primary speaker for them at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them or act as their agent or advocate. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were given multiple opportunities to settle this application and declined to do so.

I repeatedly cautioned the tenants that if I dismissed their application without leave to reapply, they would receive $0. The tenants repeatedly affirmed that they were prepared for the above consequences if that was my decision.

I repeatedly cautioned the landlords and their lawyer that if I granted the tenants' entire application, the landlords would be required to pay the tenants $21,050.09 total, including the $100.00 filing fee. Both landlords and their lawyer repeatedly affirmed that the landlords were prepared for the above consequences if that was my decision.

The landlords' lawyer confirmed receipt of the tenants' application for dispute resolution hearing package. The tenant confirmed receipt of the landlords' evidence. In accordance with sections 88 and 89 of the *Act*, I find that both landlords were duly served with the tenants' application and both tenants were duly served with the landlords' evidence.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation, pursuant to section 51(2) of the *Act*?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The tenant and the landlords' lawyer agreed to the following facts. This tenancy began on February 26, 2011 and ended on June 2, 2022. A written tenancy agreement was signed by both parties. Monthly rent of $1,350.00 was payable on the 5th day of each month. A security deposit of $650.00 and a pet damage deposit of $650.00 (collectively "deposits") were paid by the tenants and the landlords returned both deposits in full to the tenants, at the end of their tenancy.

The tenant testified regarding the following facts. The tenants want to recoup monetary compensation, due to trauma. They were wrongly asked to leave. It was not done in good faith. The tenants provided statements. Last May, they were asked to move out because the landlords' daughter was going to move in. They signed a lease ending in February 2023. They took the landlord at his word. They left in June and one month later, there were advertisements posted online by the same person to move in. The rental unit was re-rented and was never occupied by the landlords' daughter, FB ("landlords' child"). The tenants provided a letter from a caretaker saying that new tenants moved in September and moved out in December, and they signed a form K for strata. The tenant spoke to the strata manager. No one else moved into the rental unit since December. New tenants moved into the rental unit this past March. The tenants submitted evidence. The landlords called the tenant's boss at work to get her in trouble. The tenants moved out on June 2 and ads were posted on July 12. The tenants never signed a mutual agreement to end tenancy. This has caused the tenants "immense stress."

The landlords' lawyer made the following submissions. The landlords rented the rental unit to the tenants for over 10 years. The landlords treated the tenants well and gave them a celebration cake for their anniversary. The landlords completed repairs during the tenancy and followed the *Act*. The landlords' second daughter, witness SB, got married in February 2022. The landlords had a meeting with the tenants twice in March, regarding witness SB, who wanted to move into the rental unit, and she is a family member. The tenant is a real estate professional and does conveyancing with a realty company for over 20 years. The tenant knows all the requirements for leases, tenancy, and real estate. The landlords issued a 2 Month Notice to the tenants. The landlords provided text messages between the landlord and the tenant, where the tenant said she had a 2 Month Notice for the landlord to move out and saying it should have been provided prior to a mutual agreement to end tenancy. The landlord sent an email with the mutual agreement to end tenancy draft, which they signed, but the tenants did not sign it, even though they agreed to do so at the meetings with the landlords in March. The tenants asked for a 2 Month Notice from the landlords. The landlords only had to provide one month of free rent compensation to the tenants, as per the 2 Month Notice. However, the tenant misrepresented the information and told the landlords to pay two months of free rent compensation, which the landlords paid to the tenants. Witness SB could not move into the rental unit because of damages and repairs, that had to be done after the tenants moved out. The landlords decided to give the rental unit to their other daughter, FB.

The landlords' lawyer made the following submissions. The landlords provided a copy of a written tenancy agreement, which was signed on June 10, 2022, between the landlords and their child. This is evidence that the rental unit was rented to their child. The online advertisements provided by the tenants does not state the landlords' names and the landlords did not post these advertisements. The landlords rented the unit to their child, who is a family member and their daughter. The landlords provided a copy of their child's driver's license, where the address of their child was changed to the rental unit. The landlords provided a copy of their child's online purchase invoice, dated August 30, 2022, showing her delivery address is the rental unit address. The landlords provided a copy of their child's electricity bill for the rental unit address, from the hydro company from June 3, 2022 to March 10, 2023. The landlords had no other intention to do anything to the rental unit except rent it to their child. The tenants' letter from the caretaker is not sworn and there is a misspelling of the names of the tenants that are referenced on there. The last name is withheld due to confidentiality, but these are open RTB proceedings, so the information has to be shared, including with the arbitrator. The arbitrator cannot believe the tenants' documents and the statement from

the caretaker could be fabricated. The tenant admits in her own documents that she has been a conveyancer for 20 years and she works in the real estate industry. The tenants have failed to prove their case. There was no bad faith and the landlords had a true honest intention for their child to move into the rental unit. The move-out fee was not required but the landlords paid the tenants $650.00 because the tenant misrepresented the issue to the landlords.

The landlord testified regarding the following facts. The landlords did everything they could for the tenants. They baked a cheesecake for the tenants' 10 year anniversary. The tenants said they were happy and honoured to be the tenants of the landlords and there were no issues between them for the 10 years they lived there. The rent was not increased much over the 10 years by the landlords. The landlords did everything by their heart for the tenants. The landlords are trying to do everything by their heart for their own children.

The tenant stated the following facts in response. The tenant is a real estate conveyancer and works for realtors. She never said that she was licensed to manage properties. She did not misrepresent herself. She does not know tenancy law and is not an expert in this area. She had to speak to the RTB and look up information online, regarding tenancy law. It is up to the landlords to know the tenancy laws, not the tenants. The landlords waived April and May rent for the tenants and provided them with compensation for moving expenses. The landlords' daughter placed the online advertisements. The letter from the caretaker is signed by him and he is willing to talk to anyone. The tenants did not arrange for the caretaker to attend this hearing to testify as a witness. The landlords admitted that they had "renters" by using that word when they were talking about the misspelling of names. The tenants want "vindication."

The landlord stated the following facts in response. He paid the tenants what they asked for, and never bargained with them. He trusted the tenants for 10 years and he trusts them today at this hearing.

Analysis

Rules and Burden of Proof

At the outset of this hearing, I informed the tenants that, as the applicants, they had the burden of proof, on a balance of probabilities, to present their submissions, evidence, and documents to prove their monetary claims, in order to obtain a monetary order, as per section 67 of the *Act*. The tenants affirmed their understanding of same.

At the outset of this hearing, I informed the landlords that they had the burden of proof, on a balance of probabilities, to prove that they used the rental unit for the reason on the 2 Month Notice, as per section 51 of the *Act*. The landlords affirmed their understanding of same.

The tenants were provided with an application package from the RTB, including a four-page document entitled "Notice of Dispute Resolution Proceeding" ("NODRP"), which they were required to serve to the landlords.

The NODRP, which contains the phone number and access code to call into this hearing, states the following at the top of page 2, in part (my emphasis added):

> *The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*
>
> - ***It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.***
> - *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
> - *Parties (or agents) must participate in the hearing at the date and time assigned.*
> - *The hearing will continue even if one participant or a representative does not attend.*
> - *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The following RTB *Rules of Procedure* state, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*

7.18 Order of presentation
The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…

I find that the tenants did not properly present their application and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules.*

During this hearing, the tenants failed to properly review and explain their claims, amounts, and evidence submitted in support of their application. The tenants mentioned submitting documents but did not explain them in sufficient detail during this hearing. Conversely, the landlords provided relevant documentary evidence, which was explained by the landlords' lawyer during this hearing, in sufficient detail with specific references to specific documents.

The tenants did not indicate what provisions of the *Act* they were applying under or how they arrived at the amounts that they claimed in their application. This hearing lasted 62 minutes, so the tenants had ample time and multiple opportunities to present their application and respond to the landlords' evidence. I repeatedly asked the tenants if they had any other information or evidence to present, during this hearing.

Findings

Monetary Compensation of $5,750.09

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish their claims. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

> *C. COMPENSATION*
> *The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.* ***It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*** *In order to determine whether compensation is due, the arbitrator may determine whether:*
> - *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
> - *loss or damage has resulted from this non-compliance;*
> - *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
> - *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*
>
> …
> *D. AMOUNT OF COMPENSATION*
> *In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element.* ***A party seeking compensation should present compelling evidence of the value of the damage or loss in question.*** *For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.*

The tenants stated the following on the RTB online dispute access site regarding this claim:

> *"We request this amount because they are the costs we incurred as a result of our Lease being dishonoured. We had to move when we should not have had to, we paid for moving expenses, deposit on a new place and are now paying $290 per month more for a place half the size(650 sq ft) of the one we were FORCED to leave under DISHONEST circumstances. We were financially and emotionally unprepared for these costs and should be duly compensated."*

The tenants did not provide sufficient details regarding this claim during this hearing. They did not review or explain this claim, any monetary amounts, any documents submitted, any monetary order worksheet, or other information. They did not indicate what sections of the *Act* they were applying under.

It is undisputed that the tenants received two months of free rent compensation from the landlords, even though they were only entitled to one month of free rent compensation, pursuant to the 2 Month Notice and section 51 of the *Act*. It is undisputed that the tenants received $650.00 cash for moving expenses. Both parties agreed to the above information during this hearing. This information is also contained on page 2 of the 2 Month Notice. Therefore, I find that the tenants received additional compensation, for moving and other expenses, from the landlords, and this matter was settled prior to this hearing.

Therefore, the tenants' application for $5,750.09 for compensation for damage or loss under the *Act, Regulation* or tenancy agreement is dismissed without leave to reapply. The above number is taken from the RTB online dispute access site, as the tenants did not provide this information during this hearing.

12 Month Rent Compensation of $16,200

The tenants stated the following on the RTB online dispute access site regarding this claim:

> *"As stated on page 3 of the notice to end tenancy "Landlord must act in good faith" We were told by the Landlord that his daughter would be moving into the unit as they informed us verbally and also stated on the Notice To End Tenancy. They were dishonest about their intentions and clearly had an ulterior motive of renting the Unit to a non family member in order to obtain a high rate of rent. The compensation requested is the equivalent of 12 months to which we are now entitled."*

The tenants provided a copy of the 2 Month Notice for this hearing. Neither party reviewed or explained it during this hearing, including the dates or reason on the notice.

The reason indicated on the 2 Month Notice is:

- *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).*
- *Please indicate which family member will occupy the unit.*
    - *The child of the landlord or landlord's spouse.*

The tenants seek 12 months' rent compensation of $1,350.00 per month, totalling $16,200.00, because the landlords did not use the rental unit for the purpose stated on the 2 Month Notice.

The above number is taken from the RTB online dispute access site, as the tenants did not provide this information during this hearing. The tenants did not indicate what sections of the *Act* they were applying under, during this hearing.

Section 49(3) of the *Act* states the following:

> *(3)A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to 12 times the monthly rent if the landlords do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

> *51 (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.*

It is undisputed that the tenants vacated the rental unit on June 2, 2022, pursuant to the 2 Month Notice. It is undisputed that the landlords issued the 2 Month Notice to the tenants for the landlords' child to occupy the rental unit after the tenants moved out. It

is undisputed that the landlords' daughter qualifies as a child of the landlords, who is entitled to occupy the rental unit, pursuant to the 2 Month Notice.

Section 51(3) of the *Act* states the following:

> *(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.*

I am required to consider the above section 51(3) of the *Act*, regarding extenuating circumstances, regardless of whether it is raised by any party during this hearing. However, I find that the above section is not relevant to my decision, since I find that the landlords' child occupied the rental unit, as noted below.

I accept the affirmed testimony of the landlord, the affirmed submissions of the landlords' lawyer, and the landlords' documentary evidence submitted for this hearing. The tenants did not dispute the authenticity or contents of the landlords' documents during this hearing. I find that the landlords' child occupied the rental unit for at least 6 months after the effective date on the 2 Month Notice of June 1, 2022.

I find that the landlords provided sufficient testimonial and documentary evidence that their child occupied the rental unit for at least 6 months after the effective date on the notice. The landlords provided electricity invoices from a hydro company for usage between June 3, 2022 to March 6, 2023. The invoices are in the name of the landlords' child for service at the rental unit address. The landlords provided a photocopy of the driver's license of the landlords' child, expiring on January 5, 2027, with the rental unit address as her address on it. The landlords provided a written tenancy agreement, signed on June 10, 2022, indicating that landlord EC is the landlord, the landlords' child is the tenant, with the rental unit address as the place to be rented, for a tenancy beginning on June 10, 2022, on a month-to-month basis for $1.00 per month with a $1.00 security deposit. The landlords provided an invoice, dated August 30, 2022, in the name of the landlords' child, indicating that she purchased items to be delivered to the rental unit address.

I find that the landlords' child occupied the rental unit within a reasonable period of time after the tenants vacated on June 2, 2022, after the effective date of the 2 Month Notice of June 1, 2022. The landlords' electricity invoice indicates that service began at the rental unit on June 3, 2022, and an account setup charge was levied. The landlords' signed, written tenancy agreement indicates that the tenancy with their daughter began on June 10, 2022.

I find that the tenants provided insufficient documentary and testimonial evidence to dispute the landlords' evidence or to dispute that the landlords' child did not occupy the rental unit for at least 6 months, within a reasonable time after the effective date on the notice. The tenants provided rental advertisements, which do not prove that any other occupants, besides the landlords' child, moved into the rental unit. Regardless of whether the landlords posted these advertisements, it does not prove occupancy.

The tenants provided a letter from a caretaker, who claimed that two new occupants moved into the rental unit. It does not provide the surnames or contact information for these alleged occupants, so the landlords can contact them to verify the information in the letter. Withholding or anonymizing information is not permitted, since the landlords are entitled to notice and to know the case against them. The letter indicates that the alleged occupants moved into the rental unit in September. It does not state a date or a year. The letter indicates that the alleged occupants moved out in December 2022, but does not provide a date.

Further, the caretaker did not attend this hearing to testify as a witness, regarding the authenticity and contents of his letter, which was questioned by the landlords during this hearing. The tenant agreed that the tenants did not arrange for the caretaker to testify as a witness at this hearing, despite having ample time to do so, since they filed this application on July 15, 2022, and this hearing occurred on April 11, 2023, almost 9 months later. Therefore, I give little weight to the letter from the caretaker, submitted by the tenants.

The tenants provided online rental advertisements, claiming that the landlords were attempting to re-rent the unit to new tenants. However, none of these advertisements indicate the rental unit number or address on them, so I cannot confirm that they are for the rental unit. The tenants provided a copy of a photograph of an intercom, indicating that the names of the alleged two occupants is located there. However, the 3-digit number beside the two names on the intercom, does not correspond with the 3-digit

rental unit number, that is the subject of this application. Therefore, I give little weight to the above documents submitted by the tenants.

On a balance of probabilities and for the reasons stated above, I find that the landlords met their burden of proof and used the rental unit for the purpose stated in the 2 Month Notice, pursuant to section 51 of the *Act*. I find that the landlords took steps within a reasonable period after the effective date of the 2 Month Notice, for their child to occupy the rental unit, and the child occupied the rental unit for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. I find that the landlords' daughter occupied the rental unit from at least June 3, 2022 to March 6, 2023, as per the landlords' electricity invoice, which is more than 6 months.

Accordingly, I find that the tenants are not entitled to 12 times the monthly rent of $1,350.00, totalling $16,200.00, from the landlords, pursuant to the 2 Month Notice and section 51 of the *Act*. This claim is dismissed without leave to reapply.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the $100.00 filing fee. This claim is also dismissed without leave to reapply.

Conclusion

The tenants' entire 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: April 11, 2023

Residential Tenancy Branch