Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

On January 30, 2023, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant D.H. attended the hearing, with L.C. attending as an advocate for the Tenants. The Landlord attended the hearing as well, with P.G. attending as counsel for the Landlord. The Landlord advised of his correct legal name and as a result, the Style of Cause on the first page of this Decision has been amended accordingly.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. All parties in attendance, with the exception of P.G., provided a solemn affirmation.

Service of the Notice of Hearing and evidence packages were discussed, and there were no issues pertaining to service. As such, all parties' evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are

described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started in 2018 "sometime" and that the tenancy ended on or around November 2020. He stated that rent was established at an amount of $4,000.00 per month and was due on the first day of each month. A security deposit of $2,000.00 and a pet damage deposit of $1,000.00 were also paid. A copy of a written tenancy agreement was not submitted as documentary for consideration.

The Tenant advised that the tenancy started on October 1, 2019, and L.C. advised that it ended on February 1, 2021, when the Tenants gave up vacant possession of the rental unit pursuant to the Notice. She confirmed that rent was established at an amount of $4,000.00 per month, that it was due on the first day of each month, and that a security deposit of $2,000.00 and a pet damage deposit of $1,000.00 were also paid.

As well, all parties also agreed that the Tenants were served the Notice on November 16, 2020. The reason the Landlord checked off on the Notice was because the "The father or mother of the landlord or the landlord's spouse" would specifically be the persons occupying the rental unit. It was indicated on the Notice that the effective end date of the tenancy was February 1, 2021.

P.G. advised that it was the Landlord's intention to have his father or mother move into the rental unit, but it was in poor condition at the end of the tenancy. He submitted that the Landlord obtained a demolition permit for the rental unit in December 2020 as a standard practice as part of his business, and that this was done proactively. He then

contradictorily stated that the permit was obtained because the rental unit was in poor condition. He advised that the Landlord decided in January, or “after February”, that he wanted to sell the rental unit as it was not kept in a proper condition by the Tenants.

The Landlord advised that his parents lived in Richmond, and he served the Notice because he wanted them to be closer so that he could see them everyday and take them to required appointments. He testified that he showed his parents the rental unit after the Tenants moved out, and they decided against moving in because of the poorly maintained condition. He stated that his parents then rented a different place close to the Landlord at the end of May or June 2021. He submitted that he then listed the rental unit for sale, and that it sold in May or June 2021. He testified that he obtained a demolition permit in December 2020, and that he saw the unit from the outside and determined that it was not in good condition.

While it was the Landlord’s position that the Tenants were negligent for the condition of the rental unit, he did not submit any documentary evidence to support this position. However, he testified that it was “smelly to say the least”. He confirmed that he returned the Tenants’ security deposit and pet damage deposit in full, and that despite the alleged condition that the Tenants left the rental unit it, he did not claim against the deposits as it was his belief that they may need these monies due to COVID. Moreover, despite all the damages that the Tenants purportedly caused, he acknowledged that he simply left and did nothing to fix these problems prior to selling the rental unit.

The Tenant advised that they asked the Landlord to conduct an inspection at the start of the tenancy as the rental unit was already in poor condition. She testified that they pointed out holes in the walls and other deficiencies. She stated that the Landlord attempted to sell the rental unit in March 2020, and he tried to host open houses in June 2020. She submitted that they handed the keys to the Landlord on February 1, 2021, and that the Landlord did not mention any deficiencies in the rental unit. She testified that it was her belief that the rental unit was listed for sale immediately and that it was demolished after it was sold.

L.C. advised that the rental unit was sold on June 1, 2021, and she referenced the documentary evidence submitted to support the position that the Landlord did not use the property for the stated purpose. As well, she cited the text messages submitted as documentary evidence where there was no mention by the Landlord about the alleged condition of the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord, or a close family member of the Landlord, intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The first issue I must consider is the validity of the Notice. When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlord served the Notice because he wanted his parents to occupy the rental unit. As such, I find that this was a valid Notice.

The second issue I must consider is the Tenants' claim for twelve-months' compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated January 27, 2021, and Section 51 of the *Act* changed on November 16, 2020, which incorporated the following changes to subsections (2) and (3) as follows:

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

At the time the Notice was served, the Landlord advised that the intention was for his parents to move into the rental unit and that the Notice was served in good faith. Regardless, the good faith requirement ended once the Notice was accepted by the Tenants and after they gave up vacant possession of the rental unit. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, Policy Guideline # 2A states that "The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2)."

As well, Policy Guideline # 50 states the following:

> Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.
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> Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.
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> A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see Blouin v. Stamp, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months.

Finally, Policy Guideline # 50 outlines the following about extenuating circumstances: "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 before 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 didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations."

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the father or mother of the Landlord or the Landlord's spouse. However, the undisputed evidence before me is that the rental unit was clearly not occupied for the stated purpose for at least six months after the effective date of the Notice. As such, I am satisfied that the Landlord has failed to use the rental unit as per the *Act*, and the only thing I must consider now are extenuating circumstances.

In considering the Landlord's submissions, I acknowledge that the Landlord's plan was for his parents to move into the rental unit, and while he indicated that they did not move in due to the condition of the rental unit, I note that the Landlord has not submitted any documentary evidence to support his submission that the rental unit was not safe or habitable to live in.

Moreover, in my view, had the Landlord truly believed that the Tenants were negligent for damage to the property rendering it unfit for habitation, it is not clear to me why the Landlord returned the security deposit and pet damage deposit in full instead of filing a claim to recover these damages from the Tenants. This is illogical and inconsistent with common sense and ordinary human experience. Furthermore, based on the text messages submitted as documentary evidence by the Tenants, the Landlord returned these deposits by February 6, 2023. Firstly, the Landlord had ample time from the end of tenancy to review the condition of the rental unit and assess the alleged damages. Secondly, had there truly been damages to the rental unit, it is not clear why this was never mentioned in any of these communications. I find that all of these factors lead to a reasonable conclusion that the Landlord was well aware of the condition of the rental unit prior to serving the Notice, and that there were likely no damages caused by the Tenants' negligence. As such, I find that the above concerns cause me to question the credibility and legitimacy of the Landlord's submissions.

Furthermore, the Landlord indicated that his parents lived in Richmond when the Notice was served, and it appears as if they were renting this place. Given that they were supposed to occupy the rental unit after February 1, 2021, surely they would have made efforts to pack or hire movers, and give notice to their landlord to end their tenancy well in advance of this date in anticipation of moving. However, there was no documentary evidence submitted of any kind to support this anticipated move. I do not accept that they would have only completed these necessary tasks after viewing the rental unit on February 1, 2021.

In addition, the Landlord testified that his parents did not move into the rental unit and only rented a new residence near to him at the end of May or June 2021. Given that his parents would have had to give notice to end their own tenancy prior to January 2021, to coincide with moving into the rental unit, the Landlord submitted no evidence to indicate where they lived from February 1, 2021, until they rented a new place in May of June 2021. Moreover, as the date that they allegedly moved into a new rental was similar to the date that the rental unit was sold, I find it reasonable to conclude that this date was not a mere coincidence. Ultimately, I find that the above findings cause me to be further suspicious of the Landlord's credibility on the whole. As such, I find that I prefer the Tenants' evidence.

Given my assessment of the evidence and testimony before me, I find that the above doubts and inconsistencies in the Landlord's testimony, and absolute lack of any supporting documentary evidence, cause me to question the truthfulness and reliability

of the Landlord's submissions. I am satisfied that these submissions were likely crafted after receipt of the Notice of Hearing package in an attempt to portray a circumstance that did not exist. Ultimately, I do not accept that there were any extenuating circumstances that prevented the Landlord or his parents from occupying the rental unit and residing there for at least six months after the effective date of the Notice. As such, I find that the Tenants are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **$48,000.00**.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$48,100.00** 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: June 26, 2023

Residential Tenancy Branch