



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MENETHIL PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking monetary compensation for the landlord's failure to comply with the *Residential Tenancy Act*, or use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property; and to recover the filing fee from the landlord for the cost of the application.

An agent for the landlord, and the tenant and the tenant's spouse attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the landlord has complied with the *Act*, in good faith, and used the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on February 1, 2014 and ended on April 30, 2022. Rent in the amount of \$1,250.00 was payable on the 1st day of each month, which has been increased over time to \$1,348.10 per month, and there are no rental arrears. On January 10, 2014 the landlord collected a security deposit from the tenant in the amount of \$625.00 which has been returned to the tenant,

with the exception of an amount that the tenant agreed to. The rental unit is a single family home.

The landlord's agent further testified that the tenants were served with a Two Month Notice to End Tenancy For Landlord's Use of Property on January 24, 2022. A copy of a portion of the Notice has been provided for this hearing by the tenant, and it is dated January 24, 2022 and contains an effective date of vacancy of March 31, 2021. The effective date is an error made by the landlord's agent or by administrative personnel.

The owner arrived to move in during the first part of May, and was in and out for a couple of days due to a security system problem, and the landlord moved in on May 4, 2022. The owner occupies 2 bedrooms, and uses mats only, not beds. The kitchen is very rustic and at this point is being ripped apart in the living room area. The owner does not speak English, and most dealings by the landlord's agent are through the landlord's daughter. The landlord lives quite simply, and doesn't drive. The landlord's agent had to take building permits there, and has been at the rental home on several occasions, and the landlord showed the landlord's agent trees that the landlord had planted.

The building permit was to renovate the basement, and a fellow who worked on it took out a wall. The tenants had added a bathroom, which was not to code and had to be remediated. Nothing has been done upstairs until recently.

The landlord has been called away overseas because his father is ill, and left on August 1, 2023. The landlord's agent attended the property in January after the landlord's daughter asked to check about heat.

The landlord's agent agrees that the trees look dead. A neighbour close to the rental home was watching the property, but the landlord didn't expect to be gone this long.

The tenant testified that on January 24, 2022 the landlords owned 3 houses in a row, and all tenants got the same notice to end the tenancies for the landlord or spouse to move in. The tenant was on maternity leave, and the tenants were scrambling to figure out what to do. On February 14, 2022 the tenant disputed the Notice, and a hearing was scheduled for May 16, 2022. In that time, the tenant spoke to the landlord's agent stating that the landlord was not acting in good faith; how can the landlord occupy 3 homes at once. The landlord's agent responded that the landlord was not happy with the low rental amount. The tenant wouldn't have wanted to tell the landlord about required repairs because the tenant didn't want to get kicked out. The tenant told the

landlord about leaks under the sink and mold in a window, but received messages back that the tenant might get kicked out.

The Two Month Notice to End Tenancy For Landlord's Use of Property is marked with a reason for ending the tenancy; the landlord or landlord's spouse would occupy the rental unit.

At the beginning of April, 2022 the landlord did a walk-through and told the tenant that the landlord's son-in-law and family were moving in and they were checking it. The tenant dropped the May 16, 2022 hearing because the tenant found a house for the family. The landlord was understanding and gave the tenant until May 1, at which time they would bring furniture in.

The tenant has driven by, and there is no sign of life in any of the 3 houses. The landlord has provided a copy of an email from a contractor which states that in late May and June, 2022 the father of the landlord's son-in-law was living in the house next to the one the contractor was working in.

Trees are dead, and the neighbourhood is very sad now. Three houses were given a notice to end the tenancy for the same reason. They were all neighbours on that road and got to know each other, and all went through the eviction together. They talked about next steps and were all devastated. To this date, all 3 houses in a row are still empty.

The tenant denies adding a bathroom, and didn't change anything structural at all, nor could they afford to.

The landlord has homes in Calgary, overseas and perhaps other places. The tenant does not see the landlord living in a run-down home in a bad neighbourhood. Garbage and recycling bins stay on the road and have not been moved for a year in any of the 3 houses. A neighbour also told the tenant that the bins are always on the street and nobody takes them off the road. No vehicles have been at any of the properties.

The tenant's spouse testified that he contacted Telus about the security system, and it was confirmed that it was disconnected.

The tenants received photographs from the landlord on September 6, 2022 but they are not photographs of the rental unit, but a neighbour's house.

The tenant's spouse does not believe that the landlord has moved in; the home looks like a construction zone with poly up all over, which is still like that today and the grass

is dead. When the tenants resided in the rental home, grass was green and there were flowers. All are dead now and the grass has not been mowed. It is not a livable space, but a run-down house.

SUBMISSIONS OF THE LANDLORD'S AGENT:

It is not uncommon for people to leave their garbage cans on the street. There were notices to end the tenancies of all 3 rental homes, and originally the landlord was going to live in 1 house, and the landlord's daughter and son-in-law in another, and another is unlivable. That tenant moved out for not paying rent. The landlord and family were going to move into all 3 houses. The contractor worked at unit 1870, which is next to unit 1864. He was not working on unit 1864, so his email is correct.

SUBMISSIONS OF THE TENANT:

All 3 notices to end the tenancies stated the same reason; for the landlord or the landlord's spouse. The landlord's agent mentioned that someone was living at unit 1850, which is one of the 3 houses, but at that time, the tenant was still living there and stayed for quite awhile until a Bailiff removed him. No one could have lived there besides that tenant.

Analysis

Where a tenant makes such an application, the onus is on the landlord to establish that the landlord has acted in good faith and used the rental unit for the purpose contained in the Two Month Notice to End Tenancy For Landlord's Use of Property within a reasonable time after the effective date of the Notice, and for at least 6 months duration.

I have reviewed all of the evidentiary material provided by the parties including the numerous text messages and photographs. The photographs dated August 22 and October 6 show construction debris and an unfinished renovation. The Two Month Notice to End Tenancy For Landlord's Use of Property is dated January 24, 2022 and contains an effective date of vacancy of March 31, 2021, which the landlord's agent testified is an error and should read March 31, 2022. The landlord's agent testified that the tenants vacated the rental unit on April 30, 2022.

The landlord's agent did not dispute the testimony of the tenant that all 3 houses in a row received the same notice ending the tenancies, all for the landlord or landlord's spouse to occupy them. I agree that the landlord cannot occupy all 3 houses at once. Considering that the tenancy ended on April 30, 2022 and the photographs provided by the tenant, the landlord has obviously started renovations. The email from the

contractor states that the father of the landlord's son-in-law was living in the house next to the one that the contractor was working in. That does not qualify as a close family member of the landlord or the landlord's spouse.

In the circumstances, I am not satisfied that the landlord has established that the landlord has acted in good faith, or that the landlord or the landlord's spouse moved into the rental unit within a reasonable time after the effective date of the Notice. Therefore, I find that the landlord has not acted in good faith, and the tenant is entitled to compensation in the amount of 12 times the monthly rent, or \$16,177.20 (12 x \$1,348.10). Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$16,277.20.

This order is final and binding and may be enforced.

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: September 19, 2023

Residential Tenancy Branch