



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on December 6, 2022. The Tenants applied for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 26, 2022 (the Two Month Notice) and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

The Tenants and the Landlords attended the hearing and provided affirmed testimony. The Tenants were accompanied by ME, who was present only for support and did not participate during the hearing. The Landlords were accompanied by SJ and SD, who were present only for support and did not participate during the hearing.

The Tenants testified the Notice of Dispute Resolution Proceeding package was served on the Landlords by registered mail on December 7, 2022. The Landlords acknowledged receipt.

The Landlords testified the documentary evidence upon which they relied was served on the Tenants by registered mail on August 8, 2023. The Tenants acknowledged receipt.

The parties were in attendance and were prepared to proceed. No issues were raised with respect to service or receipt of the above documents. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to compensation from the Landlord related to the Two Month Notice?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on November 1, 2010 and ended on October 31, 2022, the effective date of the Two Month Notice. The parties confirmed that at all material times, rent of \$1,573.25 per month was due on the first day of each month. The Tenants paid a security deposit of \$675.00 which was returned to them at the end of the tenancy.

The Tenants testified that the Two Month Notice was issued on the basis that the rental unit will be occupied by the Landlords or the Landlords' close family member. However, the Tenants testified that the Landlords have not used the rental property for the stated purpose. In support, the Tenants submitted a notarized letter from MR, a neighbour who lives across the street from the rental unit. In it, MR states: "Since [the Tenants] vacated the home near the end of October, 2022, I have not noticed anyone living at [the rental property address]."

By way of background, the Landlords – who are sisters – testified that they inherited the rental property from their parents. They testified that the unit was rented to the Tenants but that it was always their intention to reclaim it for family use. The Landlords testified that family members, including their husbands and children, have used the rental unit for personal use. A calendar which shows when the rental unit was occupied by the Landlords and their immediate family members was submitted into evidence. The calendar shows the rental unit was used for 155 of 274 nights from December 1, 2022 to August 31, 2023.

Further, the Landlords submitted photographs depicting the interior of the rental unit. The photographs of the bedrooms and ensuite bathrooms, kitchen, and living area, show a furnished unit. The Landlords also submitted invoices from BC Hydro, Fortis BC, and Telus to demonstrate that the Landlords are paying for utilities. The Landlords also relied on notarized statements which indicate the rental unit was actively used by the Landlords and their close family members.

The Landlords testified that the rental unit has not been re-rented.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In this case, the Two Month Notice was issued on the basis that the Landlords or the Landlords' close family member would occupy the rental unit.

Policy Guideline #2A states the following with respect to the meaning of "occupy":

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that "occupy" means "to occupy for a residential purpose." (See for example: *Schuld v. Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

Section 51(2) of the Act provides that compensation may be due if the landlord does not take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if 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.

In this case, I find that the Landlords have occupied the rental unit for a residential purpose, as described in Policy Guideline #2A. Specifically, the rental unit has been used by the Landlords and their close family members as a weekend and summer get-away. Specifically, I note that the Landlords' documentary evidence shows that the rental unit was occupied by the Landlords and their close family members for 57% of the time from December 1, 2022 to August 31, 2023.

In addition, I note that Policy Guideline #2A does not require that the rental unit become a principal residence, only that it is occupied for a residential purpose. I find that the use of the rental unit described by the Landlords is a residential purpose.

Considering the above, I find the Tenants' application is dismissed without leave to reapply.

Conclusion

The Tenants' 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: September 6, 2023

Residential Tenancy Branch