Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on February 10, 2023. The Tenants applied for compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 31, 2021 (the Two Month Notice) and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

The Tenants and the Landlord attended the hearing and provided affirmed testimony.

On behalf of the Tenants, AS testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail. The Landlord acknowledged receipt of these documents.

The Landlord testified the documentary evidence in response to the application was served on the Tenants by Xpresspost. AS acknowledged receipt of these documents.

No issues were raised with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. 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 February 1, 2019. Although the effective date of the Two Month Notice was stated to be December 31, 2021, the parties agreed the Tenants moved out of the rental unit on December 21, 2021. During the tenancy, rent of $1,500.00 per month was due on or before the first day of each month.

A copy of the Two Month Notice was submitted into evidence. It was issued on the basis that the rental unit would be occupied by a child of the Landlord or the Landlord's spouse. The Tenants testified they were informed that the Landlord's daughter would be occupying the rental unit. In an email from the Landlord to the Tenants dated October 31, 2021, the Landlord states: "I will be making the downstairs available for my daughter to live when she is able to leave the treatment facility." A copy of the email was submitted into evidence by the Tenants.

The Tenants asserted that the Landlord did not do what was stated in the Two Month Notice. Rather, the Tenants assert that the Landlord re-rented the unit to KO, the Landlord's sister. A tenancy agreement between the Landlord and KO, dated January 24, 2022, was submitted into evidence by the Tenants.

The Landlord did not dispute that her daughter did not move into the rental unit. She testified that a neighbour had made a complaint to the city about "illegal" suites in the rental property. As a result, a city by-law officer advised that only family were permitted to reside in the rental property. The Landlord testified that the by-law officer also instructed that the kitchen in the rental unit had to be "decommissioned," and advised that the Landlord would receive a fine.

The Landlord testified that she issued the Two Month Notice in error and should have issued a One Month Notice to End Tenancy for Cause. The Landlord testified that she indicated her child would be occupying the rental unit because that was the only viable option on the Two Month Notice as her parents are deceased.

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 rental unit would be occupied by the child of the Landlord.

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, for the following reasons, I find the Landlord did not use the rental unit for that stated purpose. First, the Landlord acknowledged that her daughter did not move into the rental unit as indicated on the Two Month Notice and in correspondence to the Tenants.

Second, the Landlord did not dispute the Tenants' testimony that the Landlord's sister moved into the rental unit and started paying rent pursuant to a tenancy agreement dated January 24, 2022. While having a sibling reside in the rental unit may have satisfied the city's by-law requirements, a sibling is not a close family member under the Act. Policy Guideline #2A provides the following definition of a "close family member":

> …the landlord's parent, spouse or child, or the parent or child of the landlord's spouse. A landlord cannot end a tenancy under section 49 so their brother, sister, aunt, niece, or other relative can move into the rental unit.

Although I have found that the Landlord did not use the rental unit for the stated purpose, section 51(3) of the Act empowers the director to excuse a landlord from the obligation to pay compensation if there are "extenuating circumstances" that stopped the landlord from doing so.

Policy Guideline #50 provides clarification with respect to the meaning of “extenuating circumstances”:

> An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:
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> - 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.
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> 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.

In this case, I find there are no extenuating circumstances which prevented the Landlord from accomplishing the purpose or using the rental unit. Rather, the Landlord merely made an error about which form to use. The Landlord’s error about which form to use and indicating a reason for ending the tenancy which she knew to be false are not extenuating circumstances.

Considering the above, I find the Tenants are entitled to a monetary order in the amount of $18,100.00 which is comprised of $18,000.00 in compensation ($1,500.00 x 12 months) and $100.00 in recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of $18,100.00. The order must be served on the Landlord. The 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: September 25, 2023

Residential Tenancy Branch