



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This Review Hearing was convened by way of conference call concerning an application made by the tenants seeking monetary compensation for the landlords' failure to act in good faith or use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property.

A hearing was held on July 25, 2023, and a Decision was rendered on July 26, 2023. The landlords were successful in obtaining this Review Hearing on the ground of unable to attend the hearing.

The Review Hearing was originally scheduled to convene on September 21, 2023, and the landlords' son acted as agent for the landlords and sought an adjournment. The tenants did not oppose the adjournment, and I adjourned the Review Hearing to October 18, 2023. My Interim Decision was provided to the parties.

On October 18, 2023 both tenants and the landlords' agent, who is the landlords' son attended, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

Although none of the parties disputed that evidence had been exchanged, the landlords' agent has uploaded a Proof of Service document, but no evidence. The landlords' agent indicated that the evidence passed on to the Residential Tenancy Branch included a physician's note and some photographs. None of that evidence appears in the portal. The tenants have provided evidentiary material, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

The *Residential Tenancy Act* states that following a Review Hearing, I may confirm, vary or set aside the original Decision and/or order.

Issue(s) to be Decided

Have the landlords established that the landlords have acted in good faith and have 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 landlords' agent testified that this fixed-term began on November 1, 2021, and reverted to a month-to-month tenancy after April 1, 2022. The landlords' agent believes that the tenancy ended around Christmas of 2022. Rent in the amount of \$2,500.00 was payable on the 1st day of each month and there are no rental arrears. On October 19, 2021 the landlords collected a security deposit from the tenants in the amount of \$2,500.00, however the landlords' agent is not certain if it was returned to the tenants. The rental unit is the upper level of a house, and the lower level was also tenanted. There are 2 houses on the property and the landlords lived in another house, who also owned property on Vancouver Island. A copy of the tenancy agreement has been provided by the tenants for this hearing.

The landlords' agent further testified that since the September 21, 2023 hearing date, his mother passed away.

The tenants were served with a Two Month Notice to End Tenancy For Landlord's Use of Property, and a copy has been provided by the tenants for this hearing. It is dated July 11, 2022 and contains an effective date of vacancy of September 15, 2022. The reason for issuing it states: 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), specifying the father or mother of the landlord or landlord's spouse. The landlords' agent testified that his grandmother, mother and a property manager moved in once the tenants vacated. The mother of the landlords' agent was getting cancer treatment.

The parties had a verbal agreement, and the tenants moved out around Christmas or in November of that year. The landlords' agent does not know if the tenants received compensation equivalent to 1 month's rent.

Currently, the property manager resides in the rental unit, and the grandmother of the landlords' agent is now in India. The mother and grandmother of the landlords' agent went to India on October 21, 2022 because an aunt had had an aneurism. The property

manager is not related to the landlords and was taking care of the grandmother, but now the property manager pays rent.

The first tenant (SP) testified that the tenants vacated the rental unit on August 31, 2022 and gave the key to the landlord on September 1, 2022.

The Two Month Notice to End Tenancy For Landlord's Use of Property was delivered on July 11, 2022, and the tenant knew that the property manager, who mentioned it a few times, was going to move in. The property manager was upset with the tenants saying that she didn't get the rent money. However, the tenants paid it on December 3, 2021 and the tenant was sure she received it, and finally found it.

The property manager also told the tenant that she had an agreement to move into the rental unit. The one that she lived in was an older church that had 3 suites, and the property manager said it was too small and that they were going to move into the rental unit once the tenants moved out.

The tenants received the security deposit back from the landlord, as well as compensation by not paying any rent for the last month of the tenancy.

The landlord said she wanted to move her mother into the rental unit. However, the landlord rented to the property manager the first week of September. When the tenant went to return the key, the property manager was there, her car was there and she was in the house. The property manager still lives there, and the tenant does not believe the grandmother or mother moved in. The tenant knew the property manager as a neighbour. On 2 occasions the tenant went there and the grandmother wasn't there, only the property manager and her husband. The property manager also mentioned that she took the grandmother back to Vancouver Island on October 18, 2022.

The second tenant (KP) testified that the property manager told the tenant in April, 2022 that she wanted to move into the rental unit and asked the tenants to move out as soon as possible because her husband was dying and she wanted to give him a good home. After the tenants moved out, the tenant went there 3 times to get mail and the property manager and her husband were there. The tenant asked about the grandmother and was told she had left already. That was in October, 2022. The grandmother was not there.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The grandmother had an argument with the tenant, and the grandmother was occupying the rental unit.

SUBMISSIONS OF THE TENANTS:

The tenants lived in the rental unit, then in January or February, 2022 the landlord hired a moving company to move their items to Vancouver Island, not planning to return.

Analysis

The *Residential Tenancy Act* states that if a landlord does not act in good faith or use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice) commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration, the landlord must pay the tenants 12 times the monthly rent. The onus is on the landlord to establish that.

In this case, the landlord's agent did not have sufficient information to testify as to the date the tenancy ended or whether or not the security deposit or compensation had been provided to the tenants. The effective date of vacancy is September 15, 2022 and the tenant testified that the tenants moved out on August 31, 2022. The landlord's agent testified that the parent of the landlord went to India on October 21, 2022 and has not returned. That is not even close to 6 months duration.

There is no question that the property manager moved into the rental unit, and the landlord's agent testified that the property manager pays rent. That is contrary to the law, and I see no reason to vary or set aside the original order or Decision, and they are both confirmed.

Conclusion

For the reasons set out above, the Decision and monetary order made on July 26, 2023 are hereby confirmed.

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: October 27, 2023

Residential Tenancy Branch