



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlords' 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 landlords for the cost of the application.

The tenant and both named landlords 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. However during the course of the hearing the tenant advised that she didn't receive a copy of a new tenancy agreement for a new tenant. The landlord did not dispute that, and all evidence, with the exception of that tenancy agreement has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the landlords have acted 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 commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration?

Background and Evidence

The first landlord (MM) testified that this fixed-term tenancy began on January 1, 2020 and was to revert to a month-to-month tenancy after June 30, 2020. However a new

tenancy agreement was entered into by the parties for another fixed term commencing July 1, 2020 and reverted to a month-to-month tenancy after August 31, 2022. The tenancy ultimately ended on September 30, 2022.

Rent in the amount of \$900.00 was payable on the 1st day of each month, which did not change for the second tenancy agreement, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$450.00, all of which has been returned to the tenant, and no pet damage deposit was collected. The rental unit is an apartment on the 2nd floor of a 7-storey building. A copy of the tenancy agreement has been provided by the tenant for this hearing.

The landlord further testified that the tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), and a copy has been provided for this hearing. It is dated July 30, 2022 and contains an effective date of vacancy of September 30, 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 child of the landlord or landlord's spouse.

The landlords' son moved into the rental unit on September 1, 2022, prior to the tenant moving out. The landlords messed up on the Notice however the tenant was asked to move out at the end of August. The tenant didn't because the Notice was improper and the tenant commented that she didn't have a place to go. So, by law, the landlords had to give the tenant until September 30 to move out. The landlords' son moved into the den while the tenant was still there.

The landlords' son left for Europe in January but left all possessions in the apartment with full intention of returning. He applied for the program at the end of his 4th year, so in April, 2022; but did not confirm he was going until November, 2022. The landlords knew there was a possibility he would be going, but he had not fully decided or knew that he had the required 80% grade, so it wasn't confirmed. While he was gone, the landlords' other son used it and the landlord's husband used it for meetings. The landlord also used it as overnight accommodation to get to the airport. While the landlord was getting chemotherapy, the landlord's husband used the rental unit. From early January to April, 2023 no one lived there full time, but all their son's possessions were there, which the landlords used.

The rental unit was re-rented effective April 1, 2023. It remained used by the landlords when they were in the City and they used their sons' furniture until it was re-rented. The

Residential Tenancy Branch advised that the landlords could rent it out in 6 months if their situation changed.

While the landlords' son was in Europe, at sometime near the end of February or beginning of March, 2023, a friend offered a place for him to live on campus, which he preferred. He moved there in June and signed a lease to commence July 1, 2023. That was less expensive than the landlords would get for rent.

The landlords did not advertise the rental unit. A friend of the landlords' daughter was going through a divorce and had no place to go, and based on what the landlord learned from the Residential Tenancy Branch, she could move in on April 1. The landlords' daughter and the new tenant still live there.

The second landlord (BM) testified that some information provided by the tenant is incorrect. The tenant neglected to include an email from the tenant indicating that she agreed to move out. The tenant only ever received a verbal request to move out, but did get written documentation as well.

The apartment was subdivided into 3 sleeping areas and always had 3 tenants sharing. The first was the tenant and the landlords' daughter and another tenant. Then it was moved to a 2-bedroom unit and the landlords' son used the den for September 1 to the end of September when the tenant moved out. Then the landlords' son took over that bedroom.

Unfortunately, when the landlords initially rented, there was 1 lease with 3 tenants who agreed to pay \$2,700.00 per month. Over a number of years with a revolving number of tenants, an agreement was made with the tenant as an individual tenancy agreement for the entire apartment. Going from 3 tenants to 2, there was a need to share the cost between 2 people rather than the den as a third bedroom. Therefore, the increase in rent was a continuation of the tenancy agreement, but shared with 3 people instead of 2 people. Now the landlords' daughter and a tenant share \$2,700.00 per month.

The landlords' son did not move out after 2 months. He was in Europe but his stuff stayed. The landlord's wife was diagnosed in February, and in all situations a person sets out with the best of intentions and changes occur. The need for the landlord's wife to be in the City for appointments was an ongoing issue that still exists today.

The tenant testified that the eviction notice when initially presented was in bad faith. The landlords offered an illegal rent increase, and if the tenant was not prepared, an

ultimatum was to increase rent by 50% or they would move their son in. The landlords said many times that they would be forced to sell.

The tenant had been a long term tenant for just under 3 years and now pays over 125% more in rent. The tenant had seen 4 roommates move in and out of that space aside from the landlords' daughter. The tenant does not believe the Notice was provided in good faith; the landlords knew it would not be for 6 months and were aware that their son would not be there for 6 months. The landlords did not intend to do what was indicated in the Notice.

The tenant did not dispute the Notice and was not aware that she could.

The landlords' daughter told the tenant that the landlords' son did not live in the apartment in March, 2023.

The tenant also testified that it has been established in the landlords' evidence that overseas school takes time, and the landlords' son did not meet the requirements to fulfill commitments until the end of the 6 month's residency in the apartment, but lived in the rental unit for 2 months. There is no evidence to suggest that his property remained in the rental unit. As part of the *Act*, unforeseen circumstances cannot be considered. There was no intention at the time that the landlords' son should be living in the space. The tenant believes there was an intent, but not an intent to have the landlords' son live full time in the apartment.

The landlords told the tenant that the tenant could stay at a rent of \$1,350.00, but if the tenant didn't want to do that, the landlord would "take it over."

SUBMISSIONS OF THE LANDLORDS:

This has been an extremely emotional exercise and the landlords followed the requirements to the best of their ability. There were no ill intentions, nor did the landlords try to force the tenant out. The Notice given had nothing to do with the amount of rent the tenant was paying. The landlords' daughter and the landlords needed an office space, and to have a place for the landlords' son to stay; other options for him cost more money. The landlords did not know he was going to Europe. When he left, the landlords continued to use the apartment. When the landlords' son left in mid-January he left stuff in the rental unit with full intention to return. The law says to occupy for 6 months, which requires some degree of physical presence. It was not advertised for a new tenant and no plan to re-rent until the landlords' son got a place on campus for a good price.

SUBMISSIONS OF THE TENANT:

The tenant is shocked and saddened by this dispute. The eviction was initially presented in bad faith. The landlords offered an illegal rent increase of 50% which the tenant was not agreeable to. When the Notice to end the tenancy was issued, the landlords were highly aware the rental unit would not be used for the required 6 months, and did not intend to do what was on the Notice. The landlords' son did not use it at all after he went to Europe. In March, 2023 the landlords' daughter told the tenant that the landlords' son was going to live with friends and did not intend to use that space.

Analysis

Firstly, regardless of how many people resided in the rental unit from time to time during the course of this tenancy, a landlord may not increase the rent unless it is increased in accordance with the law. The landlords do not dispute the tenant's testimony that they wanted \$1,350.00 in rent or the landlords would take over the rental unit or sell.

Where a tenant makes an application for compensation for the landlords' failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), the onus is on the landlord to establish that it was used for that purpose commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration. Specifically, the law states:

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 the landlord or purchaser, as applicable, does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The reason for ending the tenancy 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." It specifies the child of the landlord or landlord's spouse.

The landlord testified that the landlords' son moved into the rental unit on September 1, 2022 while the tenant still resided in the rental unit. The landlords' son went to Europe in January, 2023, and then he moved to campus signing a lease effective July 1, 2023. The effective date of vacancy is September 30, 2023, and living in the rental unit from September 1 to January is not 6 months duration.

Neither the landlords nor the tenant have provided a full copy of the Two Month Notice to End Tenancy For Landlord's Use of Property, and the 2 of 4 pages I have been provided with by the tenant does not indicate which child of the landlords will reside there. The landlords testified that the rental unit did not sit empty while the landlords' son was in Europe, but was used by family members, including the landlords from time to time. They also testified that while in Europe, the landlords' son left all of his items in the rental unit, assuming he would return to the rental unit. The rental unit was re-rented for April 1, 2023, exactly 6 months after the effective date of the Notice.

The *Act* also states that if I accept extenuating circumstances exist that prevent the landlords from accomplishing the stated purpose, I may excuse the landlords from paying the 12 months' compensation. However, I agree with the tenant that unforeseen circumstances is not extenuating circumstances. The landlord (MM) testified that the landlords' son applied to go to school in Europe in April, 2022 but did not receive confirmation that he was accepted until November, 2022. The landlord also testified that the landlords knew there was a possibility that their son would be going away, but had not fully decided or knew he had good enough grades, so at the time the Notice was issued there was no confirmation.

The intention of the compensation set out in the *Act* is to prevent landlords from ending a tenancy in bad faith. The landlords testified that after their son moved to Europe the rental unit was used by their other son, and by the landlords for meetings and overnight accommodations and while the landlord was receiving chemotherapy, and no family used it full time from early January to April 1.

I refer to Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, which states, in part:

C. OCCUPYING THE RENTAL UNIT

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.

Vacant possession

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

6-month occupancy requirement

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).

There is no question that the landlords’ son didn’t live in the rental unit for 6 months. The landlords explained in their testimony that the rental unit was used by the landlords from time to time, and another son stayed there as well. However, in the time that the landlords or other son was not staying in the rental unit, it was vacant. I find that to be unlawful. Therefore, I find that the landlords must compensate the tenant 12 times the monthly rent of \$900.00, or \$10,800.00.

Since the tenant has been successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlords.

I grant a monetary order in favour of the tenant as against the landlords in the amount of \$10,900.00. The landlords 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 landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$10,900.00.

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: October 31, 2023

Residential Tenancy Branch