



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC and O

Introduction

This hearing was scheduled to address the Tenant's application for a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulation or tenancy agreement and for "other".

The Tenant stated that on November 01, 2016 the Application for Dispute Resolution, the Notice of Hearing, and 10 pages of evidence submitted with the Application were sent to the Landlords, via registered mail. The male Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On March 09, 2017 the Tenant submitted 2 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlords, via registered mail, on March 09, 2017. The male Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 12, 2017 the Landlords submitted 15 pages of evidence to the Residential Tenancy Branch. The male Landlord stated that this evidence was served to the Tenant, via registered mail, on April 12, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Tenant entitled to compensation pursuant to section 51(2) of the *Act* because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Tenant is seeking compensation pursuant to section 51 of the *Act* because she believes the rental unit was occupied by a housekeeper after her tenancy ended.

The Landlords and the Tenant agree that:

- this tenancy began prior to the Landlords purchasing the rental unit;
- the Landlords purchased the rental unit sometime in April of 2016;
- the rental unit is a renovated garage that is attached to the main house by a breezeway;
- the former Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 19, 2016;
- the Two Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by June 30, 2016;
- the Two Month Notice to End Tenancy declared that the tenancy was ending because the rental unit will be occupied by the landlord or the landlord's close family member and all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit; and
- the rental unit was vacated on May 20, 2016.

The male Landlord stated that:

- when this property was purchased the Landlords intended to live in the main house and use the rental unit as an art studio and additional bedroom;
- the rental unit has been used as an art studio since the tenancy ended;
- the Landlords rented out the main portion of the house through Airbnb for 12 days in August of 2016;
- neither the house nor the rental unit was rented out for any period other than the 12 days in August of 2016;
- a female friend lived in the rental unit for 11 days in August of 2016 while she was housesitting for the Landlords;
- the main house was occupied by Airbnb guests for 4 of the 11 days the friend was housesitting;
- he stayed in the rental unit for the other days in August while the main house was occupied by Airbnb guests;
- there is a reference in the Airbnb ad that was posted that indicates a housekeeper will be on site in the "garden suite";
- when this ad was posted they intended to have their female friend housesit for all Airbnb stays, although that did not occur; and
- the term housekeeper was used in the ad in an attempt to make the advertisement appear more professional.

The Tenant stated that she had no reason to dispute the Landlords' submission that the main portion of the house was portion of the house through Airbnb for a total of 12 days in August of 2016.

The Tenant submitted an Airbnb advertisement, in which the Landlords are clearly advertising the main portion of the home, as it is described as a two bedroom home with a housekeeper in the "garden suite".

The Advocate for the Tenant stated that he lives in the vicinity of the rental unit and he saw people coming and going from the rental unit approximately 6 times in the middle of August. He stated that he observed a female, who he knows is not the female Landlord, accessing the unit during August.

The Landlords submitted a letter from a friend, in which the friend declared that she housesat for the Landlords between August 11th and August 22nd and between December 27th and January 14th.

The Landlords submitted a letter from a friend, in which the friend declared that she stayed with the Landlords for several nights per week for approximately six weeks and that she housesat for the Landlords in January. She declared that she was not renting a suite from the Landlords.

The Landlords submitted a letter from a neighbour, in which the neighbour declared that they were told that the Landlords' main home would be rented on Airbnb; that they were told a friend would be staying in the studio in August as a house-sitter; that the male Landlord stayed in the studio during August; and that the Landlords use the studio as part of their home.

The Landlords submitted an email from the female Landlord, dated August 23, 2016, in which she informs a third party that her husband will be "managing your stay".

Analysis

On the basis of the undisputed evidence I find that the former landlord served the Tenant with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, which required her to vacate the rental unit by June 30, 2016.

On the basis of the undisputed evidence I find that this Two Month Notice to End Tenancy was served because the new Landlords intended to occupy the entire residential complex, including the rental unit referred to by the parties as the garden suite.

Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. defines "occupy" as "to hold in possession; to hold or keep for use". On the basis of the evidence submitted by the Landlords and the testimony of the male Landlord, I find that since this tenancy ended the rental unit has been used as an art studio, as temporary accommodations for the Landlords' friends, and as a temporary accommodation for the male Landlord. I find that these activities meet the definition of "occupy" and I there find that the Landlords have occupied the rental unit since the tenancy ended.

In adjudicating this matter I note that the Tenant has submitted no evidence to establish that the rental unit has been rented out to a third party or to establish that the rental unit was used for any purpose not stated by the Landlord.

In adjudicating this matter I have placed no weight on the undisputed evidence that the Landlords rented out the main portion of the house through Airbnb. As the main house was not part of this tenancy, I find it entirely irrelevant that it was rented out through Airbnb.

In adjudicating this matter I was influenced, in part, by the letters submitted in evidence by the Landlords. I find that these letters corroborate the male Landlord's testimony that the rental

unit was used by the Landlords and guests of the Landlords.

In adjudicating this matter I was influenced, in part, by the email dated August 23, 2016 which was submitted in evidence by the Landlords. I find that this email corroborates the male Landlord's testimony that he lived in the rental unit for a period of time in August.

In adjudicating this matter I have placed little weight on the testimony of the Advocate for the Tenant who stated that he lives in the vicinity of the rental unit and he saw people coming and going from the rental unit in August. As the Landlords acknowledge that the rental unit was occupied by a house-sitter for several days in August, I find that the observations of the Advocate have little evidentiary value.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the Landlord must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As the Tenant has failed to establish that the rental unit was not occupied by the Landlords after this tenancy ended and/or that the Landlords do not continue to occupy the rental unit, I dismiss the Tenant's claim for compensation on the basis of section 51(2)(a) of the *Act*.

Conclusion

The Tenant's claim for a monetary Order 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: May 02, 2017

Residential Tenancy Branch