



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlords for the cost of the application.

The hearing did not conclude on the first scheduled date and was adjourned to continue. My Interim Decision was provided to the parties.

The tenant and both landlords attended the hearing as well as legal counsel for the landlords on both scheduled dates. The parties each gave affirmed testimony and were given the opportunity to question each other and give submissions.

During the first scheduled date, it was determined that evidentiary material provided by the landlords had been received by the tenant but was not before me. With the consent of the parties the hearing commenced, and the evidentiary material was received by me prior to the second scheduled date. It is marked as being received by the Residential Tenancy Branch on September 18, 2017. The tenant did not oppose inclusion of the evidence, and no other issues with respect to service or delivery of documents or evidence were raised. All evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for double the monthly rental amount 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?

Background and Evidence

The tenant testified that a tenancy agreement was entered into between the tenant and a landlord for a month-to-month tenancy to begin in January, 2013, or so which ended on December 31, 2016. The rental unit sold and the tenant remained a tenant of the purchasers. Rent in the amount of \$1,100.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the tenant paid a security deposit in the amount of \$550.00, all of which has been returned to the tenant. The rental unit is a bachelor suite.

The tenant further testified that on October 27, 2017 the tenant received a Two Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided for this hearing. It is dated October 23, 2016 and contains an effective date of vacancy of December 31, 2016. 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)." The tenant did not dispute the notice but moved out in accordance with the notice, and did not pay rent for the last month of the tenancy.

The tenant found an Air BNB listing for the property in January, 2017. Because it was not a full listing, the tenant couldn't retrieve all of the information but followed it finding a listing confirming renters. The tenant went through the website putting in dates to find out if he could rent it if he had wanted to. The tenant has provided copies of "Reviews" dated in March and April, 2017 from the website.

The tenant submits that the landlords did not use the rental unit for the purpose set out in the Two Month Notice to End Tenancy for Landlord's Use of Property and the tenant claims monetary compensation pursuant to Section 51(2) of the *Residential Tenancy Act* and recovery of the \$100.00 filing fee.

The first landlord (DS) testified that she is the mother of the other named landlord, and as also done for her other 2 sons, purchased the rental property for her son in May, 2016 for her son to live in, for his own person use. The rental unit is registered to her son and by the time he took title, had been accepted to a University in Australia, so no notice to end the tenancy was given to the tenant at the time of purchase. While in Australia he did not look after the rental unit and the landlord (DS) collected rent and paid expenses. A copy of a one-way air ticket to Australia has been provided as evidence.

In the fall of 2016 the landlord learned that her son wanted to return at the end of the school term. The landlord suggested that he notify the tenant that he intended to move into the rental unit effective January 1, 2017. He planned to live in the rental unit and signed up for 2 courses at UVIC, and would require part-time accommodation in both Vancouver and Victoria. The landlord's son resided in the rental unit in January, and the landlord paid for some Air BNB accommodation for him in Victoria.

Probably sometime in January or February, 2017 the landlord decided it would be a good idea to advertise the rental unit on Air BNB for the nights that her son would be in Victoria to off-set the costs of renting through Air BNB in Victoria. The landlord was not aware at the time that doing so was contrary to the strata by-laws and the City By-laws. Account statements have been provided showing deposits from income generated from the rental unit from Air BNB and costs, but no income was received in January or February, 2017 or beyond the end of April, 2017. The landlord's son moved back to the rental unit from Victoria at the end of April, is working full-time in the City, and has lived there since. The building elevator wasn't booked for moving furniture and such because the landlord's son moved in slowly. Other than the Air BNB rentals, no one else has resided in the rental unit.

The second landlord (NB) testified that he currently resides in the rental unit, which is registered in his name. At the time of purchase the landlord was living in Victoria part time and then received an offer to go to school in Australia. He went to Australia in July, 2016 and stayed till December, 2016. In September, 2016, however, the landlord decided to return to the City where the rental unit is located, and touched bases with the tenant to let him know of his intention to end the tenancy. The landlord intended to live in the rental unit whenever he was in the City.

Once the tenant moved out, the landlord moved a bed in that he had ordered and other furniture periodically through January, 2017. He stayed in the rental unit about two-thirds of the time and the other third on couches of friends or at an Air BNB. While using the Air BNB app, the landlord thought it might be a good way to offset costs. He made an initial account as a test run, which he assumes that's what the tenant found, but he hadn't activated it. In early February, 2017 the landlord decided to run the advertisement with Air BNB while he was in Victoria for school.

The rental unit started to rent through Air BNB in March, 2017 but when in the City, he stayed in the rental unit. In April it was also rented through Air BNB but none since April 25, 2017 when the landlord returned to the City and has resided in the rental unit since.

Submissions of the Tenant:

Intent is only in question where a tenant disputes a Two Month Notice to End Tenancy for Landlord's Use of Property. The landlords agree that the rental unit was not used for the purpose contained in the landlord's notice. Further, Air BNB is not permitted by the strata or the City.

Submissions of the Landlords' Legal Counsel:

Black's Law Dictionary defines "occupy" as: "To take or enter upon possession of, to hold possession of; to hold or keep for use; to possess; to take or hold possession".

The landlord continued to occupy the rental unit and was up-front about his subsequent decision to offset some costs. He never relinquished occupancy, and was not required to live there full-time. Case law also states that.

Analysis

I agree with the tenant that the good faith intent of a landlord applies in circumstances where a tenant disputes a Two Month Notice to End Tenancy for Landlord's Use of Property. The question before me is not whether or not the landlords had good faith intent, but whether or not the landlords actually used the rental unit for the purpose contained in that notice. The *Residential Tenancy Act* states (underlining added):

Tenant's compensation: section 49 notice

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (2) In addition to the amount payable under subsection (1), if
- (a) steps have not been 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
 - (b) the rental unit is 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Legal Counsel for the landlords mentioned case law on the point, but did not provide copies of any. I do not agree that the legislation allows for part-time rentals. The legislation does not specify for half of the time or one third of the time, but draws no

lines. A person cannot “occupy” a place while it is rented to another person. It does not suffice to use the rental unit part-time for the purpose contained in the notice, but continually for at least 6 months beginning within a reasonable period after the effective date.

The landlord has not complied with the *Act*, and therefore, I find that the tenant has established a claim of double the monthly rent, or \$2,200.00.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

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 \$2,300.00.

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 12, 2017

Residential Tenancy Branch