Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- repayment of the filing fee pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that they served the landlord the notice of dispute resolution package (the "package") by registered mail on December 28, 2018. The tenants provided the Canada Post Tracking Number to confirm this registered mailing. The tenants testified that the package was returned to them undelivered. The tenants did not know what address the package was sent to. The tenants testified that after the package was returned to them they sent the contents to the landlord via e-mail sometime in January 2018. The landlord testified that he received the package via e-mail sometime in January 2018 and was able to review and respond to the information contained therein.

While e-mail is not an approved method of service according to section 89 of the *Act,* I find that since the landlord confirmed receipt of the package and was able to review and respond to the materials contained therein, the package is sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act.*

At the beginning of the hearing the landlord testified that only the shortened version of his first name was on the dispute resolution application. Pursuant to section 64 of the *Act,* I amend the dispute resolution application to state the landlord's full legal name.

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to repayment of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2017 and ended on November 30, 2017. Monthly rent in the amount of $2,300.00 was payable on the first day of each month. A security deposit of $1,150.00 was paid by the tenants to the landlord. At the end of the tenancy the landlord returned the $1,150.00 security deposit to the tenants. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that he wanted to renovate the rental property and move into it with his family. To that end the landlord left a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of December 31, 2017 (the "Two Month Notice") in the tenants' mailbox on October 28, 2017. The tenants confirmed receipt of the Two Month Notice on October 29, 2018. The Two Month Notice stated that the reason for issuing the eviction notice was that the rental unit was going to be occupied by the landlord or the landlord's close family member.

Both parties agree that the tenants moved out on November 30, 2017, one month prior to the effective date on the Two Month Notice. The tenants testified that in December 2017 they found out that the rental property was put up for sale. The tenants submitted into evidence a listing from realtor.ca showing the rental property for sale in December 2017. The tenants allege that the landlord never moved into the rental property. The tenants are seeking damages in the amount of two month's rent, pursuant to section 51 of the *Act* at the time the dispute application was made.

The landlord testified that in December 2017 he received a quote for the renovations he wanted to have completed on the rental property before he moved in. The landlord testified that the quote was very high and he had second thoughts about renovating the property and moving into it. The landlord testified that it was at this time that his realtor suggested that he list the property instead of moving into it.

The landlord testified that for two weeks in December 2017 he listed the rental property for sale and considered re-renting the rental property. The landlord testified that at the end of December 2017, he received a more reasonable quote for the renovations on the rental property and decided not to sell the property or re-rent it and to go ahead with the renovations and to move into the property once they were complete. The landlord testified that the rental property was

renovated from January 2018 to the end of May 2018; when the renovations were complete he moved into the rental property with his family.

In support of the landlord's testimony, he submitted the following documents into evidence:

- photographs of the renovations completed at the rental property including renovated, kitchen, bathrooms and living room;
- Fortis BC bill addressed to the landlord at the rental address with a billing date of January 10, 2018 and a due date of February 1, 2018;
- Fortis BC bill addressed to the landlord at the rental address with a billing date of May 9, 2018 and a due date of May 31, 2018; and
- BC Hydro bill addressed to the landlord at the rental address with a billing period of March 15, 2018 to March 31, 2018 and a billing date of May 16, 2018.

The tenants submitted into evidence an e-mail from the landlord to tenant R.H. dated December 21, 2017 which in part stated:

> "your allegation of false pretences is completely unfounded and not based on facts. As clearly indicated to you, I did have the intention of renovating the house and then moving into the house. I firmly stand by this statement as that is the truth. After you moved out, I met with contractors for the renovation but the cost of the renovation for me to move in was in excess of what was anticipated, thus the need for me to consider alternative arrangements including listing the property for sale. If it does not sell, I will again rent it out. You are free to apply to rent it if you like."

The landlord testified that he did write that e-mail and that it was after this e-mail that he received the lower renovation quote and decided to go through with the renovation and move into the rental property.

The tenants testified that they do not believe that the landlord is residing at the rental property because they have driven past the property on several occasions and they noticed that the windows were taped up for four to six weeks. The landlord testified that the windows were taped up for approximately two weeks because he was having the exterior of the house painted and did not want to get paint on the windows.

The tenants testified that they drove by the property as recently as one week prior to the hearing and that the windows were still taped up and that the landlord's vehicle has not been at the property on any of the occasions that they have driven past. The landlord testified that the windows were not all taped up one week ago and have not been taped since the exterior painting was completed. The landlord also testified that his car is not at the property during the day because he drives it to work.

Analysis

In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honesty of intention with no ulterior motive. Policy Guideline 2 states that the landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.

The landlord's testimony regarding his intention to renovate the rental property and move into it is corroborated by the December 21, 2017 e-mail submitted into evidence by the tenants. I find that the landlord was not acting in bad faith when he served the tenants with the 2 Month Notice.

At the time this application was made, section 51 of the *Act* stated that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord the equivalent of double the monthly rent payable if:

- 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
- 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.

I do not find the tenants testimony regarding the state of the windows to be indicative of the landlord not living at the property, given the landlord's reasonable explanation that the windows were taped up while the exterior of the property was being painted. While the parties disagree on the duration of time the windows were taped up, it is the tenants who bear the onus of proving their case. I find that the tenants have not proved that the windows were taped up for a period greater than two weeks.

I find that approximately one to two months after the tenants vacated the rental unit, pursuant to section 51(2)(a) of the *Act*, the landlord took steps to accomplish the stated purpose for ending the tenancy, that being renovating the property before moving into it as is evidenced by the photographs showing extensive renovations. I accept the landlord's testimony that he moved into the rental property at the end of May 2018 after the interior renovations were completed, as is evidenced by the Fortis BC and BC Hydro bills in his name addressed to the rental property in question.

I find that while the landlord listed the property for sale after the tenants vacated the rental unit, contrary to the reasons listed for eviction on the Two Month Notice, the landlord ultimately moved into the rental property pursuant to the reasons stated in the Two Month Notice.

I find that the rental property was used for the purpose stated in the Two Month Notice within six months of the tenants vacating the rental property as per section 51(2)(b). Therefore, I dismiss the tenant's application without leave to reapply.

Conclusion

I find that the landlord did not breach section 49 or 51 of the *Act* and the tenants are not entitled to a Monetary Order pursuant to section 51 or 67 of the *Act.*

The tenants' application 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: July 19, 2018

Residential Tenancy Branch