Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

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

- authorization to recover the filing fee for this application from the landlord;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to question one another. The parties acknowledged the exchange of evidence and stated there were no concerns with timely service of the hearing notice and both were prepared to deal with the matters of the application.

The landlord had a witness on standby who would testify to his intention to purchase the house of which the rental unit is part. I did not require any evidence related to the potential sale of the home as it is not relevant to this dispute thus the witness did not testify.

There were some interruptions in the early part of the hearing due to a participant in a different dispute calling in to this hearing. This occurred twice and at one point the participants of this hearing were disconnected. I was able to reconnect the participants and the hearing continued uninterrupted.

Issues to be Decided

- Is the tenant entitled to compensation pursuant to Section 67 of the *Act*?
- Is the tenant entitled to recover the $100 filing fee for this application from the landlord, pursuant to Section 72 of the *Act*?

Background and Evidence

The tenant claims on May 22, 2018 she was served a two-month notice to end tenancy and the reason given was “The rental unit will be occupied by the landlord or the landlord’s close family member…” (herein referred to as “two-month notice”). Two pages of the notice were entered into evidence. She testified the landlord told her a close family member, the landlord’s brother-in-law, would be moving in.

The tenant has applied for compensation because she claims that no close family member of the landlord did move in after she vacated on July 1, 2018. The tenant has also applied to be compensated for 12 months of payments she made to the landlord to continue cable television service to the rental unit.

No written tenancy agreement was entered into evidence and the landlord stated there was no tenancy agreement. The tenant stated that the tenancy agreement was written into the purchase documents when the landlord purchased the house in which the rental unit is situated.

The landlord and tenant agreed that their relationship began in August 2013 when the landlord became the new owner of the rental unit; the landlord moved into the upstairs of the house and the tenant continued to live in the rental unit in the basement. The monthly rent was $600 per month and no damage deposit was paid to this landlord. The tenant and landlord agreed that the rent included the cost of utilities.

The tenant and the landlord agreed that the two-month notice was issued on May 22, 2018 and the tenant vacated on July 1, 2018. The landlord testified that his brother-in-law intended to move in but he obtained employment at the Vancouver airport and decided to live closer to the airport so he did not move in.

The landlord testified that he entered into a verbal agreement to sell the house to his friend and they would look for new tenants. He stated that his son advertised for new tenants and the advertisement submitted into evidence shows this was in late July 2018. The advertisement and text messages submitted by the tenant shows the whole home was offered for $4,500 per month; if the basement was not also rented, rent would be $4,200 per month; the basement suite alone was $1,500 per month. The landlord did not dispute this evidence. He testified that no tenants have rented any part of the house and it remains vacant.

The landlord testified that the cost of cable service was not included in the rent and the tenant received cable service as a courtesy which was outside of any tenancy agreement. In approximately April 2017, the landlord advised the tenant he would be reducing the cable service to “basic”. The tenant asked the landlord to keep the channels that she watched (which would not be included in basic cable) and they came to a verbal agreement that he would keep the channels she watched in return for $30 per month.

The tenant and landlord agreed that the payment of $30 per month to maintain the tenant’s cable service occurred for twelve months (May 2017 – May 2018). The landlord terminated the cable service entirely when he moved out on June 2, 2018. The tenant testified the landlord also terminated the alarm system, the heat and the electricity; the landlord strongly denies this and testified that only cable service was terminated when he moved out.

The tenant has applied for the return of the $360 she paid for 12 months of cable service because she believes she should not have had to pay for the cost to continue to receive a service that was included in her tenancy agreement.

The landlord testified that when he bought the home in 2013 he agreed the tenant could stay and the rent would remain $600 per month. He stated that he could have raised the rent 5% per year, but he chose to never raise the rent. He noted that the tenant had all utilities covered including a washer and dryer; he reiterated that the cable service was a courtesy and not part of any tenancy agreement. He testified that after the tenant left, he had to do painting and repair damage done by the tenant’s cats, which he did not ever approve being in the rental unit.

The landlord reiterated his plans for the rental unit: first he was going to sell it, then he decided to rent it to his brother-in-law, and now he has decided to sell it to his friend. I asked him directly if a close family member ever moved into the rental unit and he said no.

Analysis

Section 49 of the *Act* deals with notices to end tenancy for the landlord’s use of property. In this case, the landlord testified it was his brother-in-law who was expected to move in. Section 49(1) provides the definition of “close family member”:

> (a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

The landlord's brother-in-law does not meet the *Act*'s definition of a close family member. The landlord testified his brother-in-law did not move in and did not state during the hearing that any other family member intended to move in or did move in. He testified the rental unit has remained vacant since the tenant vacated on July 1, 2018.

Section 51(2) of the *Act* provides for consequences when a two-month notice is issued and the landlord does not take reasonable steps to accomplish the stated purpose for ending the tenancy. The section is reproduced below, with my emphasis added in bold:

> 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
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> **(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy,** or
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> (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

By making reference to his intent to sell the rental unit (both prior to and after the plan for the brother-in-law to move in) and having the prospective purchaser available to testify, the landlord may believe that selling the rental unit is an acceptable reason for him to have ended the tenancy. However, the *Act* requires that the purpose for ending the tenancy as described on the Notice to End Tenancy is the purpose which must be accomplished. The Residential Tenancy Branch's Policy Guideline 50 "Compensation for Ending a Tenancy" https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl50.pdf states the following:

> **Accomplishing the Purpose/Using the Rental Unit**
> Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months. This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy. A landlord cannot end a tenancy to

> occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

I find the landlord did not take reasonable steps within a reasonable period of time after the effective date of the notice to occupy the rental unit himself, or have a close family member occupy the unit. The landlord vacated the house on June 2, 2018, the tenant vacated on July 1, 2018 and the rental unit was advertised for rent of $1,500 (2.5 times the value of the tenant's rent) before the end of July 2018.

I find that under section 51(2) the tenant is entitled to compensation in the amount of twelve times the monthly rent of $600, namely $7,200.

With regard to the tenant's claim for reimbursement of $360 for twelve months of cable service, I find that the landlord's provision of cable service to the tenant for the period of August 2013 to April 2017 was part of the tenancy agreement. This is evident because the landlord enabled the tenant to receive the service and then notified her when the service was going to be restricted to a fewer number of channels.

The *Act* requires a landlord to compensate a tenant for terminating or restricting a service; section 27(2) of the *Act* is reproduced below:

> 27(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
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> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
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> (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Per section 27(2), the landlord had a legal obligation to give the tenant 30 days written notice of his intention to restrict the cable service and to then reduce her rent for the loss of this service.

Section C of the Residential Tenancy Branch's Policy Guideline 22 "Termination of Restriction of a Service or Facility" https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl22.pdf states the following:

> Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

Instead of a rent reduction to compensate the tenant for the reduction of cable service, the landlord and tenant arrived at a verbal agreement that the tenant could keep cable service in exchange for $30 per month. I find that given the content of section 27(2), this verbal agreement is an attempt to avoid or contract out of the *Act* and thus has no effect (reference section 5(1) and 5(2) of the *Act*).

The tenant is entitled to reimbursement of $360 for having to pay an additional cost to maintain a service that was included in her tenancy agreement.

Conclusion

The tenant is successful in her application and I award her the $100 filing fee.

The landlord is ordered to compensate the tenant in the amount of $7,560.

The tenant is provided with an order according to these terms. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court.

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: December 6, 2018

Residential Tenancy Branch