Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On October 15, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") requesting a Monetary Order for compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord's Agent (the "Landlord") and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Before the hearing formally began, the Landlord's Agent requested an adjournment as the Landlord was out of the country and on vacation.

Rules of Procedure 7.9 guide the Arbitrator to consider the following when allowing or disallowing a party's request for an adjournment; the oral or written submissions of the parties; the likelihood of the adjournment resulting in a resolution; the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; whether the adjournment is required to provide a fair opportunity for a party to be heard; and, the possible prejudice to each party.

When deciding whether to adjourn this hearing, I noted that the Tenant was present and ready to proceed; that all parties had exchanged evidence; that the Landlord provided written submissions and was represented by his brother, who was also the property manager; and, that the Landlord had been notified of this hearing in October 2018.

As a result, I find that the Landlord had ample time to prepare for the hearing, provide submissions and prepare an agent. I find that by continuing this hearing today, that the

Landlord would still have a fair opportunity to be heard, via his Agent, and that there would be no prejudice to either party. As such, the hearing was not adjourned.

Issues to be Decided

Should the Tenant receive compensation from the Landlord, in accordance with Section 51 and 67 of the Act?
Should the Tenant be reimbursed for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Tenant and the Landlord agreed on the following terms of the tenancy:

The one-year, fixed term tenancy began with another landlord on May 1, 2014, and continued as a month-to-month tenancy. The monthly rent was $1,250.00. The original landlord collected a $625.00 security deposit and a $100.00 pet damage deposit at the beginning of the tenancy. The Landlord purchased the residential property in the spring of 2018 with a completion date of June 15, 2018. When the Tenant moved out of the house (the "rental unit"), on August 31, 2018, the Landlord returned the full amount of the deposits to the Tenant.

The Tenant and the Landlord agreed on the following facts regarding the Two-Month Notice to End Tenancy for Landlord's Use of Property, dated June 15, 2018 (the "Notice").:

The Landlord served the Notice to the Tenant by posting it to her door on June 15, 2018. The Notice had an effective vacate date of August 31, 2018. The reasons, as stated on page 2 of the Notice, for the end of tenancy was that the Landlord intended to occupy the rental unit.

Tenant's Evidence:

The Tenant testified that her original landlord advised her, in early 2018, that he needed to sell the residential property and that the new buyer will likely want to build a new home. By March 25, 2018, a new buyer had been established for the rental unit. The Tenant stated that conversations with the realtor involved in the sale of the rental home, and between the Tenant and the new Landlord, always acknowledged that there was a plan to tear down the rental unit and rebuild.

The Tenant submitted copies of a text between herself and the realtor from March 26, 2018. The Tenant asked the realtor about prepping for an inspection of the rental unit for the new buyers. The realtor replied, “There will be no inspection as they plan to tear it down!”.

The Tenant submitted copies of a text between herself and the Landlord from June 20, 2018. The Tenant asked the Landlord, “As far as procedure when I leave, anticipating a teardown, do you want me to clean the house?”. The Landlord replied, “As long as it is emptied out a deep clean isn’t necessary.”

The Tenant submitted a copy of a text between herself and the Landlord that discussed whether the Tenant could keep certain plants in the yard if the house is going to be demolished. Another text included the Landlord arranging for contractors to come by to measure the house. At no time did the Landlord contradict the Tenant when she acknowledged that the rental unit would be demolished.

The Tenant stated that she moved out of the rental unit on August 31, 2018. The Tenant submitted a picture of the rental unit, dated October 1, 2018, with an excavator in the backyard and the garage/carport structure missing. On October 2, 2018, the Tenant took a picture of the demolition permit poster that was posted on the lot of the rental unit. The Tenant submitted a picture, dated October 11, 2018, that showed the house on the back of a flat-bed truck. The Tenant submitted a picture of the residential property with the house/rental unit missing, dated October 12, 2018.

The Tenant stated that the Landlord, regardless of planning to demolish the rental unit, only provided her with the two-month Notice. The Tenant did not want to move and stated the Landlord lied about his intention to occupy the rental unit and, instead, obtained permits and started demolishing the rental unit within a month of the end of the tenancy.

The Tenant is claiming twelve times the monthly rent payable under the Tenancy Agreement.

Landlord’s Evidence:

The Landlord’s Agent referred to a letter that had been submitted as evidence from the property owners, the Landlords. The letter stated that the Landlord intended to reside in

the rental unit until they could build a new house on the property. As the house was in good condition, they planned on doing some minor renovations such as new laminate flooring, painting and removing the carport structure to better access the back yard.

On June 1, 2018, the Landlord sold their family home and rented a short-term rental in preparation to move into the rental unit, once vacated.

On June 15, 2018, the Landlords served the Notice to the Tenant to vacate the rental unit.

The Landlord testified that in September 2018, they obtained a demolition permit from the local district for the purpose of removing the garage/carport structure and to eventually move the house. The Landlord did not submit the demolition permit as evidence. When asked, the Landlord could not say when the permit was issued.

The Landlord stated that, at the same time, they listed the house for sale with the house moving company. The house moving company required a hazardous material report before they would consider moving the house. The Landlord also stated in his submitted letter, that a hazardous material report was required before any contractor could remove the carport or perform repairs to the interior of the house.

The Landlord submitted the hazardous material report as evidence. In the report it stated that the engineering company attended the rental unit site on September 12, 2018 to conduct a visual reconnaissance of structures on the property; obtain samples of suspect material for laboratory analysis; and, obtain photo documentation. Charts within the report indicated that some of the samples were analyzed on September 17, 2018. The Landlord did not state when they received the report from the engineering company.

The Landlord stated that when the report was received, the Landlord did not feel comfortable or safe residing on the property as there were levels of asbestos and lead that were identified in various parts of the house. While discussing their options, the Landlord learned that the moving company had a buyer for the house. The Landlord stated that it would be in their best interest to have the house removed and to move-up their new house construction date.

The Landlord included in his statement, "…it was the property owner's full intention to reside on the property but due to extenuating circumstances and for the health and safety of their family, this was not feasible."

Analysis

Section 51 of the Act directs the Landlord who gives a Tenant notice to end the tenancy under Section 49 of the Act must pay the Tenant an amount that is the equivalent of twelve times the monthly rent payable under the Tenancy Agreement if 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 the rental unit is not used for that stated purpose for at least six months' duration, beginning within a reasonable period after the effective date of the Notice.

Residential Tenancy Policy Guideline 50 (the "Policy Guide") speaks to compensation for ending a tenancy for landlord's use. Regarding the landlord's responsibility to accomplish the purpose for ending the tenancy, the Policy Guide states the following:

> *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.*

In this case the Landlord testified that he intended to move his family into the rental unit when the Two-Month Notice to End Tenancy for Landlord's Use of Property, dated June 15, 2018, was served on the Tenant. However, the Landlord admitted that he did not occupy the rental unit after the tenancy ended. Instead, the Landlord testified that he delayed moving into the rental unit to obtain hazardous material reports for the purpose of performing repairs to the interior of the house (and to eventually move the house). As a result of the Landlords inactions to move into the rental unit and instead, to renovate the rental unit, I find that the Landlord failed to take the appropriate steps to

accomplish the stated purpose for ending the tenancy, in accordance with Section 51 of the Act.

I find that the Landlord's argument that he did not move in to the rental unit based on extenuating circumstances, specifically the results of the hazardous materials report, are moot, as the Landlord had already been planning to renovate the rental unit prior to moving in, contrary to Policy Guideline 50.

As a result, I find in favour of the Tenant and order the Landlord to pay the Tenant an amount that is the equivalent of 12 times the monthly rent payable under the Tenancy Agreement, pursuant to Section 51(2) of the Act.

I find that the Tenant was successful with their Application and should be compensated for the cost of the filing fee, in the amount of $100.00.

The Tenant has established a monetary claim in the amount of $15,100.00, which includes 12 times the monthly rent of $1,250.00 for a total of $15,000.00, and the $100.00 in compensation for the filing fee for this Application for Dispute Resolution. Based on these determinations, I grant the Landlord a Monetary Order for $15,100.00, in accordance with Section 67 of the Act.

Conclusion

I grant the Tenant a Monetary Order for the amount of $15,100.00, in accordance with Section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: February 14, 2019

Residential Tenancy Branch