



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This proceeding dealt with a tenant's application for monetary compensation that is payable to a tenant where a landlord does not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*, as provided under section 51(2) of the *Residential Tenancy Act* ("the Act"). Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure. The hearing was held over two dates and the Interim Decision should be read in conjunction with this decision.

Issue(s) to be Decided

Did the landlords use the rental unit for the purpose stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property? If not, did extenuating circumstances prevent the landlords from using the rental unit for the stated purpose?

Background and Evidence

The tenancy started on July 1, 2015 on a month to month basis. The rent was \$1,450.00 payable on the first day of every month. The tenant vacated the property on August 16, 2018.

The landlords served the tenant with a *2 Month Notice to End Tenancy for Landlord's Use of Property* on May 25, 2018 with a stated effective date of July 31, 2018. The tenant did not file to dispute the 2 Month Notice; however, the landlords applied for and obtained an Order of Possession by way of dispute resolution proceeding held on July 24, 2018. As reflected in the decision issued on July 24, 2018 the parties agreed to extend the effective date of the 2 Month Notice to August 16, 2018.

The reason for ending the tenancy, as stated on the 2 Month Notice, was that: *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).*

In making this Application, the tenant asserts that the landlords continued to reside in Calgary and that a younger man was residing in the rental unit after her tenancy ended. In support of her position, the tenant testified that she had returned to the rental unit on a number of occasions and did not see the landlords there. When the tenant spoke with a neighbour she was told a young couple was residing in the rental unit. The tenant observed beer cans and cigarettes outside and the furniture she could see on the inside of the house appeared to be that which a young couple would own, not the landlords. The tenant spoke with a young man at the rental unit on December 21, 2018 and January 11, 2019. The tenant recorded her conversation with the young man and submitted it as evidence.

The tenant submitted that the audio recordings of the young man describe how the young man's girlfriend replied to an advertisement for the rental unit; that the girlfriend had since moved out; and, the furniture that was in place when the young man first saw the rental unit as subsequently removed and the young man brought his own furniture. The tenant submitted that she determined the young man was paying rent of \$1,650.00 including utilities which is more than she was paying. The tenant submitted that the landlord(s) would only stay in the rental unit when the young man was out of town working.

The tenant also enlisted the help of a friend who drove by the rental unit several times. The tenant's witness had been excluded and was called to testify. The witness testified that he drove by the rental unit in his vehicle very slowly approximately 30 times starting in December 2018 until early February 2019 and during that time the rental unit usually appeared devoid of life, with only one small light on. The witness observed a green/blue pickup truck in the driveway that the witness believes belongs to the young man living in the rental unit. Upon cross examination by the landlords, the witness testified that he did see a blue Honda with Alberta license plates in the driveway.

The tenant was of the position the landlords were motivated to end her tenancy to raise the rent in a red hot real estate market since the landlords are getting \$200.00 more in rent per month than she was paying and that they may be able to get even more than that after six months pass.

The landlords submitted that they no longer reside at their Calgary property and that they rented that property the year prior. The landlords submit that starting in September 2018 they have been using the rental unit as their residence although the landlords acknowledged that they do spend a significant amount of time elsewhere, including trips to see the landlord's ailing father/father-in-law in Calgary, the landlords' ill daughter in Halifax, to spend time at their cabin in another part of the Province and extensive international travelling. The landlords explained that the male landlord is retired and the female landlord is on extended leave and that they had planned to travel extensively but to also test out Kelowna (where the rental unit is located) as a home base for their Canadian residence. However, it was unexpected that they would be spending so much time away from home as they did not anticipate their parents and daughter needing so much of their attention and assistance. The landlords provided documentation in support of their position that the landlord's father/father-in-law and daughter are ill and the female landlord is on extended leave from her job.

The landlords explained that since they have been away so much they decided to rent out rooms in the rental unit, largely for insurance purposes, so that there would be people in the home when they are away. The landlords testified that they also rented out rooms for this same purpose when they resided in their Calgary home and spent a lot of time travelling.

The landlords maintain that they used the entire rental unit starting in September 2018 and after September 2018 they have had exclusive use of one to two of the bedrooms and shared access to the kitchen and bathroom with their roommates. The roommates have changed a couple of times between October 2018 and April 2019.

In support of their position that they occupy the rental unit as their residence, the landlords provided evidence of changing their house insurance policy from a rental policy to an owner occupied property; utility bills for the rental unit in the landlord's name; a rental agreement for their Calgary property and a utility bill for the Calgary property to show their tenant has utilities in her name; and, letters from the roommate and a tenant in the carriage house located on the residential property confirming the landlord occupies the rental unit. The landlord also provided a dentist receipt to demonstrate he uses the services of a dentist in Kelowna.

The landlords also point to the audio recording the tenant provided as evidence in support of their position that the roommate does not rent the entire house and that he rents rooms; that the landlords do stay at the house; and, the landlords have belongings in the house.

The landlords deny being motivated to end the tenancy for financial gain. The landlords described how the tenancy prior to the tenant's was approximately 20 years in duration and the rent was raised very minimally in all of those years; and, the tenant's rent was only raised once during her tenancy. The landlords stated they do not end tenancies to raise rent. The landlords are of the position they have suffered loss of income as a result of ending the tenancy.

Analysis

When a tenancy is ended for landlord's use of property under section 49 of the Act, as in this case, a tenant is entitled to compensation from the landlord. Compensation equivalent to one month's rent is payable for a tenancy ending for landlord's use, as provided under section 51(1) of the Act. A tenant may be entitled to additional compensation under section 51(2) of the Act where the rental unit is not used for the purpose stated on the *2 Month notice to End tenancy for Landlord's Use of Property*.

In this case, the tenant is seeking the additional compensation provided under section 51(2) of the Act.

Section 51(2) provides for the additional compensation and section 51(3) provides for circumstances where the landlord may be excused from having to pay the additional compensation. Below I have reproduced subsections 51(2) and (3):

- (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
 - (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
 - (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.
- (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount

required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[My emphasis added]

The reason for ending the tenancy, as stated on the 2 Month Notice served upon the tenant, is that provided under section 49(3) of the Act: *A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

[My emphasis underlined]

Under section 49(1), "landlord" is defined to mean an individual who at the time of giving the 2 Month Notice holds at least a ½ reversionary interest in the property. In this case, I heard that both of the named landlords are the owners of the subject property. I have presumed that the landlords, as husband and wife, own the property in joint tenancy in the absence of any evidence to the contrary. Accordingly, I find that if one or both of the landlords, or their close family member, occupied the rental unit starting within a reasonable time after the tenancy ended and for at least six months the tenant would not be entitled to compensation under section 51(2).

It is important to point out that the landlord, landlord's spouse or close family member were to "occupy" the rental unit and the Act does not use words such as "reside" or "live in". Meaning must be given to the words actually used in the legislation. As for the meaning of "occupy", the Act does not define the word "occupy" or "occupied" or "occupation" and I have turned to the meaning provided by Black's Law Dictionary. "Occupy" is defined as: "to take or enter upon possession of; to hold possession of; to hold or keep for use; to tenant; to do business in; to possess; to take or hold possession."

The landlords submit that they have occupied at least one of the bedrooms in the rental unit for their exclusive use and have had access and use of the kitchen and a bathroom along with their paying roommates after the tenancy ended. While the landlords have travelled a lot, including pleasure travel, travel to visit ailing family members, and, to spend time at their cabin resulting in a significant amount of time away from the rental unit I find the landlords did not give up possession of their bedroom(s) at the rental unit or access to or the right to use and access the kitchen and bathroom at the rental unit while having roommates. Further, the landlords refute the tenant's allegation that they continue to reside in Calgary and they submit that the property they own in Calgary was rented out to a tenant.

The landlords provided documentation in an effort to demonstrate their position above, including: letters from the roommate and other tenant living in the carriage house of the subject property; a tenancy agreement and utility bill for a tenant renting the Calgary property; documentation to demonstrate the illness of their family members; changes made to the house insurance policy for the rental unit after the tenancy ended; and, a dental bill for the landlord using the services of a dentist in close proximity to the subject property. I find the landlords' evidence supports their position.

To contradict the landlords' position, the tenant submitted testimony that she did not observe the landlords at the property after the tenancy ended but saw and spoke with and observed a young man residing at the property; and, her witness' testimony that the subject property looks unoccupied much of the time but that the witness observed vehicles that appear to belong to the young man occupying the rental unit and the landlord's vehicle. The audio recording provided by the tenant includes statements from the landlords' roommate whereby he states that he rents rooms and does not rent the whole house; that the landlords have a room downstairs and the landlords use the kitchen even though they are not there all that often; and, both the tenant and the roommate agree that the rental unit would garner at least \$2,000.00 per month in rent for the entire house. I find the tenant's evidence is not inconsistent with the landlords' position that they use a portion of the rental unit for their own use, that they have a roommate also residing in the rental unit, and they have been away travelling a significant amount of time.

In light of the above, I find I accept that the landlords have been occupying at least a portion of the rental unit after the tenancy ended and I accept that they continue to do so at this point in time.

This case is somewhat unique in that the tenant had been renting the entire house under her tenancy agreement and after the tenancy ended the landlords have been occupying only a portion of the rental unit while roommates occupy other portions while other portions are for shared use.

As stated previously, meaning must be given to the words used in the legislation, and words cannot be substituted or added under the principles of statutory interpretation. The Act requires that the owners, or close family members, occupy the rental unit after the tenancy ended. The Act does not require exclusive occupation or exclusive possession by the owners or their close family members only. Accordingly, I am of the view that broad interpretation of “occupy” may be applied and that so long as the owner(s) or close family members of the owners are occupying the rental unit it is irrelevant as to whether other persons are also occupying the rental unit. To illustrate: in a case where a tenancy is ended so that an owner may occupy the rental unit and the owner moves into the rental unit along with his best friend to help offset living costs, I find such an arrangement is acceptable and would not entitle the tenant to additional compensation since the owner is occupying the rental unit.

In this case, the landlords wanted to use the rental unit, or a portion of it, for their own use and since the tenant rented the entire house, the landlords could not have been able to use a portion of the rental unit without ending the tenancy. To do so would have been a serious breach of the tenancy agreement. Therefore, to obtain use of a portion of the rental unit I find the ending of the tenancy for landlord's use was the appropriate and contemplated course of action under the Act.

In light of all of the above, I find I am satisfied the landlords have occupied the rental unit starting within a reasonable time after the tenancy ended and for at least six months. Therefore, I find the tenant is not entitled to additional compensation under section 51(2) of the Act and I dismiss her Application without leave to reapply.

Conclusion

The tenant's 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: April 18, 2019

Residential Tenancy Branch