# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act ("Act")* for a monetary claim of $1,991.20 for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and to recover the cost of their filing fee.

The Tenant and the Landlord, S.W., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Two witnesses, one for the Landlord and one for the Tenant were also present and provided affirmed testimony.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they received the other Party's Application, evidence and other documents, and had time to review them before the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order pursuant to section 67 of the *Act*?

- Is the Tenant entitled to recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

In the hearing, the Parties agreed that the Tenant had lived in the building for some time in 2014, and then again in 2015, until May 2018. They agreed that there was no written tenancy agreement, but that the monthly rent was $940.00, due on the first day of each month. The Parties agreed that the Tenant did not pay a damage deposit.

On March 10, 2018, the Landlord served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice"). The Landlord had checked off boxes on the form stating that the reasons for the 2 Month Notice were:

- 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 the individual's spouse); and

- The landlord intends to convert the residential property for use by a caretaker, manager or superintendent of the residential property.

The Parties had a hearing on April 23, 2018, and arrived at a Settlement Agreement, as follows:

a. The landlord represented for that he intends to use the rental unit for the next 6 months as follow:
    - For the storage of materials for the purpose of upcoming renovations to the rental property
    - For office use
    - The rental unit is being de-commissioned to comply with the demands of the City of Vancouver to reduce the number of rental units in the rental property to two.

b. Based on the above representation of the landlord the tenant withdraws her application to cancel the 2 month Notice to End Tenancy.

c. The parties acknowledge that as a result of the withdrawal of the application to cancel the 2 month Notice to End Tenancy the landlord is entitled to an Order of Possession effective May 31, 2018.

d. The parties acknowledge the Tenants are entitled to rights under section 50 and 51 of the Act including the right to the equivalent of one month rent.

e. The landlord shall pay to the Tenants the sum of $3000 in full satisfaction of the Tenants claims set out in this Application for Dispute Resolution including the claim for compensation for problems with the chimney/fireplace, problem with the window/window sills, the removal of a wall between the bedroom, and lack of a roof and ceiling and the tenants release and discharge the landlord from any further claims with respect to these items. The tenant stated she reserves the right to make other claims with other tenants in the building that are unrelated to the above claims and those claims are not part of this settlement.

f. Payment shall be by certified cheque on or before May 15, 2018.

[(the “Settlement Agreement”)]

The Tenant said in the hearing before me that she applied for dispute resolution, because the Landlord evicted her “with ulterior motives, not in good faith.” She said that the Landlord provided tenants with “several letters” in which he said he was going to do “huge renovations and demolish the upstairs.” The Tenant provided copies of letters in which the Landlord said that renovations were planned.

In a letter dated January 20, 2018, the Landlord said:

> Dear tenants,
>
> This letter of intent is to inform you of Ownerships future plans for this building and therefore your existing suites.
>
> A renovation to begin in the near future will require that all of the upper rental units to be vacated. We are now anticipating that demolition will begin within the next 3-6 months, and as a measure of good faith, we would like to give you as much time to find new accommodation as is possible. We will give you all formal notices of eviction once our building permit is issued. Once the formal notice is issued, you will have 2 months to vacate.
> Sincerely,
>
> [signature]
> [Printed name] (Owner)

The Tenant also provided a copy of a letter from the Landlord to the tenants dated March 5, 2018, which includes the following:

> Through our permit application process, we have discovered that only 2 residential units have been documented with the City. In order for us now to obtain a building permit, we are first required to submit for a Development Permit to increase the number of allowable units to 3, even though the building had existed with 3 residential units for over 45 years. A decision on this is pending review of our drawings by the Planning Department. However, the current unit configuration is in contravention of the approved zoning by-law.
>
> Proceeding with our renovation of the 3 units would necessitate a Development Permit, which may take longer than we had anticipated. Consequently, we will now need you to vacate your unit, as we require occupying it for the purposes of storing our construction materials, tools, and cabinetry for the renovation, as well as using it for a Manager's Office, and also to be in compliance with the approved zoning.

I find this is consistent with the terms of the Settlement Agreement.

The Tenant commented on this letter in the hearing, saying that the Landlord had her vacate her unit "so he can store construction materials, tools and cabinetry for the construction process." She said this was contrary to the reasons he checked off on the 2 Month Notice, as noted above.

In the hearing, the Landlord said:

> Again the purpose [of the 2 Month Notice] was to decommission the unit, because during our permit application, we discovered the building was only zoned for two units, not three. There is not a box you can check on this form, there is not even another to explain what you are evicting for. The closest thing was landlord's purpose and caretaker's suite. I store my ladders there, I use it as an office, so it's exactly what I intended to evict her for. The amount of money she received [from the previous hearing noted above], the arb stated that the reason for storage use and office use and to decommission the unit which is exactly what I've done.

The Landlord submitted a copy of an email exchange he had with a representative from the City of Vancouver. I find this exchange confirms the Landlord's conclusion that the

rental unit property was not in compliance with the zoning bylaws, as the Landlord said was the case.

The Tenant said: “The basis of my claim is that I was wrongfully evicted.” The Tenant said that the Landlord has a personal issue with her, because: “I started researching my rights. We had so many issues.”

The Tenant submitted a letter signed by a current tenant of the rental unit property, M.C., dated February 5, 2019. This letter states that neither the Landlord nor his close family members have been residing or using the rental property in any capacity.

The Tenant submitted text message exchanges she had with the Landlord and she highlighted the following, mentioning it in the hearing.

Tenant:

> I will pass on your response:) In case you are unaware, under the rental tenancy act heat and hot water are considered an emergency, not an upgrade. And a safe and unobstructed entrance to our home is a right. You keep saying that these apartments are worth double, but this is just not factual. Your logic is flawed. Your cheque will be ready. Have a great weekend.

Landlord:

> My blood is boiling again… you really have to get a reality check. My dad has not raised the rent on any of you for about 5 years, because he’s not greedy and genuinely cares about young people trying to make a living in a very expensive city. And it’s absolutely infuriating that you’re lecturing me on tenant rights. Have we infringed your rights? Have we been unfair? No one has prevented you from having heat or hot water. When the water was shut off it was because David had a leak. When the heat went off we called someone to fix it. I am trying to get everything working properly and upgraded, and [you] fight me all the way. How am I going to replace a stair if you say you need to have access from it? Right now the only obstruction to your entrance is the stuff you put in the public hallway, which should be moved into your respective units!
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> Please take a look at what 2 bedrooms are going for in your neighbourhood, and then tell me you still think we’re taking advantage of you. …btw, And I know that you sub let your place which is not allowed, and that has to stop.

The Tenant suggested in the hearing that this demonstrates that the Landlord did not

like her and evicted her, as a result of his feelings toward her. The Tenant said: “The reason why [the Landlord] evicted me was because I had advocated for the tenants’ rights and we were binding together. It is a low cost rental unit and there are other people of a lower socio economic group . . . I have four degrees and a lot of debt. He kicked me out.”

The Tenant said that she submitted photographs of the rental unit that show that it is empty and she said that the Landlord is not storing anything there.

Analysis

Section 49 (3) of the *Act* states:

> (3) 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.

I find that “occupy” in this sense does not mean that a landlord or close family members have to “move in” to the rental unit. In the evidence before me, I find that the Landlord took over the rental unit in order for the property to be in compliance with the bylaw. I find that this is a way of occupying the rental unit, which was anticipated by the Landlord prior to the 2 Month Notice being served on the Tenant. For instance, the Landlord gave the tenants pre-Notice notice of his intention to renovate the building in his January 20, 2018 letter noted above. Also, in his March 5, 2018 letter to the tenants, the Landlord also advised them of the zoning issue he discovered, while working toward a permit. These are examples of the Landlord’s expressed intention for the property, which intention is consistent with the terms of the Settlement Agreement.

RTB Policy Guideline #2, “Ending a Tenancy: Landlord’s Use of Property” (“PG #2”), states:

> If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

The Landlord provided evidence that during the permit application process he discovered that the property was only zoned for two units, not three. In the hearing he said he had to “decommission” the rental unit to be in compliance with the zoning bylaw. I find that this is an example of a landlord utilizing the rental unit for the landlord’s use.

PG #2 also states under the heading: “Consequences for not using the property for the stated purpose”

> If a tenant can show that a landlord who ended their tenancy under section 49 of the RTA or section 42 of the MHPTA has not:
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> • taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
>
> • used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only),
>
> the tenant may seek an order that the landlord pay the tenant a set amount of additional compensation for not using the property for the purpose stated in the Notice to End Tenancy.

The Landlord said that he has used the rental unit as storage space and as an office, although, he did not say that he did this or intended to do this full time. The Tenant provided evidence indicating that the Landlord left the rental unit empty for periods of time. I do not find this to be inconsistent with the Landlord’s evidence of his use of the rental unit.

Based on all the evidence before me overall, and on a balance of probabilities, I find that the main reason the Landlord issued the 2 Month Notice was to arrange for the property to be in compliance with the City of Vancouver zoning bylaw, which said that this was a two-unit building, not a three-unit building. Based on the evidence before me, I find it more likely than not that since the rental unit has been vacant, the Landlord has used it for storage and office purposes from time to time. The Act does not require that a landlord “occupy” or live in a rental unit. Based on all the evidence before me overall and on a balance of probabilities, I find that the Landlord did what he said he would do in the Settlement Agreement, which is what resulted in the end of the tenancy, rather than the Notice to End Tenancy . I find that the Landlord did not breach the Settlement Agreement.

I find that the Tenant is unsuccessful with her Application, and I dismiss it without leave to reapply. Since the Tenant was unsuccessful in her Application for a monetary order, I also dismiss her claim for recovery of the filing fee.

Conclusion

The Tenant is unsuccessful. I dismiss her Application 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 2, 2019

Residential Tenancy Branch