Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenant applied for dispute resolution on January 23, 2019 seeking compensation against the landlord under sections 51(2) (as it was in force on May 14, 2018) and 67 of the of the *Residential Tenancy Act* (the "Act"), and, for recovery of the filing fee under section 72 (1) of the Act.

A dispute resolution hearing was convened on May 17, 2019. The tenant, the landlord, and a witness for the landlord attended the hearing, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Neither party raised any issues with respect to the service of evidence or documents.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred, but only evidence relevant to the issues of this application are considered.

Issues

1. Whether the tenant is entitled to compensation under section 51 of the Act.

2. Whether the tenant is entitled to compensation under section 72 of the Act.

Background and Evidence

The tenancy began on April 15, 2010 and ended on June 30, 2018. Monthly rent at the start of the tenancy was $1,000.00, increasing to $1,110.00 in June 2017. Submitted into evidence was a copy of the written tenancy agreement.

On May 14, 2018, the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). The Notice was served on the tenant by way of mail and received by the tenant several days later. The Notice, a copy of which was submitted into evidence, indicated that the effective end of tenancy date would be August 1, 2018.

Page 2 of the Notice stated that the landlord was ending the tenancy because "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).

The tenant vacated the rental unit on June 30, 2018.

The tenant testified that a neighbour across the street witnessed a Japanese family moving into the rental on or about July 25, 2018. On or about August 7, 2018, the neighbour again confirmed that the family—a husband, wife, and baby—were living in the rental unit. Submitted into evidence by the tenant was a video, taken August 29, 2018, in which the tenant approached the rental unit and knocked on the door. The door was answered by a Japanese woman holding a baby. The woman indicated that she was living in the rental unit. A further video submitted into evidence, taken September 18, 2018, confirms that the family resided in the rental unit.

The landlord testified that she moved into the rental unit the same day (that is, June 30) that the tenant was moving out. She explained that she lived there "part time" in July and August, but also testified that "no one lived there" in July and August. She purchased some new furniture and was looking forward to enjoying what the ski resort town offered. The landlord said that she also allowed her friends use the rental unit occasionally, over the summer.

Circumstances then changed, and unfortunately the landlord's daughter was diagnosed with melanoma. The landlord went overseas in October 2018.

The rental unit is in a quadplex, and there is a gentleman who lives in another rental unit. The gentleman knew someone who was a contractor or tradesperson. After some discussions, the landlord agreed to let the contractor and his family move into the rental unit in exchange for work to be done around the property. It was a "win-win" situation, described the landlord. The contractor moved into the rental unit with his wife and baby.

The landlord disputed the tenant's testimony regarding when the contractor's family moved in. It was not until mid-September 2018 that they moved in, and not in July 2018.

I asked the landlord when the contractor's family had left, if at all. She responded that "they are still there" in the rental unit. However, the landlord has just returned from travel at the end of April 2019 and needs to attend to the rental unit to see what has been done. In her testimony, the landlord and her witness testified that at no time did they advertise the rental unit or solicit potential tenants.

In her rebuttal and final submission, the tenant argued that the landlord acted in bad faith when she issued the Notice, and that if the landlord does occupy the rental then "why [are there] no hydro, telephone, internet, or cable bills?" entered into evidence. And, "why are there are no pictures of how she decorated" the rental unit?

In her rebuttal and final the submission, the landlord reiterated that there was nobody living in the rental unit throughout August and the contractor that does currently reside in the rental unit has done a fair number of things, such as installing proper dryer vents, moved a washer and dryer into the property, and so forth. "Mostly maintenance and repairs," clarified the landlord.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

Here, the tenant seeks compensation under section 51 of the Act, which currently permits me to grant compensation in an amount equivalent of twelve times the monthly rent payable under the tenancy agreement if the landlord does not take certain steps as outlined under this section of the Act.

I note, however, that this section of the Act (which permits twelve times the monthly rent to be paid) did not go into effect until May 17, 2018, three days after the Notice was issued by the landlord.

Section 51(2) of the Act, as it was in force on May 14, 2018, reads as follows:

> In addition to the amount payable under subsection (1), if
>
> (a) 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
>
> (b) 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,
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> the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Here, the landlord moved some new furniture into the rental unit right after the tenant moved out. Whether she "lived" there or not is immaterial: the landlord must only "occupy" the rental unit. Under the Act, a landlord can accomplish occupancy by the simple act of leaving personal property in the rental unit and then leaving it vacant if they so wish. During this period, the landlord was in compliance with the Act.

But that all changed the day the Japanese contractor and his family moved in. Whether the family moved into the rental unit mid-September 2018 or late July 2018 is rather moot: the landlord or her close family member did not occupy the rental unit (as was the stated purposes in the Notice for ending the tenancy) for a period of at least 6 months beginning with a reasonable period after the effective date of the Notice. The landlord did not occupy the rental unit for more than one or two months, at most.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving her claim that the rental unit was not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective of the Notice. As such, pursuant to sections 51(2) and 67 of Act, I order that the landlord must the tenant an amount that is equivalent of double the monthly rent in the amount of $2,220.00.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party.

A successful party is generally entitled to recovery of the filing fee. As the applicant was successful I grant her claim for reimbursement of the filing fee in the amount of $100.00.

Conclusion

I grant the tenant a monetary order in the amount of $2,320.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 22, 2019

Residential Tenancy Branch