Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Little Oak Realty and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFL

Introduction

The tenants seek compensation against the landlords under sections 51 and 67 of the *Residential Tenancy Act* (the "Act"), and recovery of the filing fee under section 72.

The tenants applied for dispute resolution on February 5, 2019 and a dispute resolution hearing was held on May 28, 2019 and on July 15, 2019. The tenants, the first landlord's agent, and the second landlord (added as a party to this dispute), attended the hearing on July 15, 2019.

As stated in my Interim Decision of May 29, 2019, I adjourned the matter on May 28, 2019 for the purposes of allowing the landlord to submit documentary evidence that would support their argument that a third party be added as a respondent, and to give the parties an opportunity to settle.

I ordered that the landlord (Remax) serve copies of any submitted evidence to both the tenants and to the third party's legal counsel no less than 14 days before the next hearing, and that the tenants serve their application and evidence to the third party's legal counsel no less than 14 days before the next hearing.

The tenants advised that the parties had not settled. All parties confirmed service of evidence as ordered by my Interim Decision. And, while the second landlord's legal counsel was not in attendance she confirmed that she was ready to proceed with the hearing in his absence. The hearing thus proceeded.

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

Preliminary Issue: Adding Additional Party

As stated in my Interim Decision, the landlord Remax provided a written submission, which was briefly summarized orally in part by the landlord's agent during the first hearing. Essentially, the landlord acknowledged that they were the party who issued and served the Notice to the tenants during the tenancy. The landlord's agent submitted, however, that they did so under the instructions of their client, the third party (S.W.). The landlord acted as the third party's agent during the tenancy. After the end of tenancy date of December 31, 2018, the landlord severed its relationship with S.W.

Further to the Interim Decision, and before the July 15, 2019 hearing, there was submitted documentary evidence establishing that there was, in fact, a legal relationship between the landlord Remax and the third-party S.W. This evidence included various invoices, a BC Hydro bill, and correspondence that establishes, on a balance of probabilities, a legal relationship between the owner of the rental unit (S.W.) and the owner's property manager/agent Remax. There is, I find, no doubt that Remax acted on behalf of the third-party S.W. during the tenancy. Finally, it should also be noted that this relationship appears to have ceased at some point just before January 1, 2019.

Rules 7.12 and 7.13 of the *Rules of Procedure,* under the Act, set out the circumstances when a person may, or will, be added as a party to a dispute, as is the case before me. Moreover, in determining whether to add or remove a party, I must consider procedural fairness and the role of the person being added or removed in the circumstances that led to the request that they be added or removed as a party.

Based on the evidence submitted by Remax and taking into account any lack of objection by S.W. regarding this evidence, I find that S.W. meets the definition of "landlord" for the purposes of the Act. Landlord, as defined in section 1, includes "the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord" exercises powers and duties under this Act.

Given the above, I exercise my discretion under Rule 7.13 and add S.W. as a second landlord to this dispute. S.W.'s legal name has been added to the style of cause (i.e., the cover page) to this Decision.

S.W. acknowledged that she was in receipt of the tenants' evidence, that she was prepared to proceed with the hearing, and that no further service of evidence was required. As such, I find that the requirements of service for the purposes of Rule 7.13 are satisfied.

Issues

1. Are the tenants entitled to compensation pursuant to section 51 of the Act?

2. If yes, are the tenants entitled to compensation for the cost of the filing fee?

Background and Evidence

The tenant testified that the tenancy began on November 4, 2016 and ended on December 10, 2018. Monthly rent was $1,000.00 throughout the tenancy, and the tenants paid a security deposit of $500.00. There was no pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

On October 24, 2018, the landlord's agent (D.L.) served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). The Notice, a copy of which was submitted into evidence, was dated and signed by D.L. on October 24, 2018 and indicated that the tenancy was to end on December 31, 2018.

Page 2 of the Notice indicates that the reason for the tenancy ending 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 spouse)." The tenant testified that this was also her understanding of why they were being evicted.

Deciding to move out early, on December 10, 2018 the tenants conducted a move-out walk-through inspection with the landlord's agent (D.L.) and at that point also returned the keys. The tenant testified that throughout the tenancy they communicated solely with Remax's agent D.L. but never with the landlord S.W.

A short time later, a friend of the tenants brought to their attention information such that the rental unit was vacant and being listed for sale. They believe that the rental unit was listed for sale on or about January 17, 2019. Submitted into evidence were eight screenshots of the listing. One screenshot, dated January 30, 2019, indicated that the rental unit was listed for $282,900. The listing was removed shortly afterward.

Finally, the tenant submitted that it is their position that the Notice was not issued in good faith. When I asked her why they believed this to be the case, the tenant argued that "because only 17 days after the effective [vacate] date [the rental unit] was put on the market." She further argued that this was well before the six month or reasonable time period had passed, as required by the Act.

The landlord Remax's agent (D.L.) testified that he agreed with the tenant's submission regarding dates and events. He testified that he received a phone call from S.W. who indicated that "she was moving in." Shortly after the tenants moved out, he returned the keys to S.W. by courier and received a final payment from S.W. in mid-December 2018.

Insofar D.L. was concerned, Remax had no further dealings with either the tenants or S.W. after that point. Until, of course, he received a Notice of Dispute Resolution Proceeding package in early February 2019. Later, during his rebuttal and final submissions, D.L. reiterated that "I believed that S.W. was moving in."

In closing, the agent testified that Remax simply "did what my landlord [S.W.] told me to," in respect of issuing the Notice.

Landlord S.W. testified that she had put the rental unit on the market for seven months (from April to October 2018) without success. The tenants resided in the rental unit during this listing period. Eventually, S.W. told D.L. that she was "taking the property off the listing" in order to have repairs done. Repairs that needed to be done on the rental unit were simply "not being done." There were, she described, "more and more problems" with the rental unit that required her attention.

After the tenants vacated, S.W. spent approximately four days cleaning the rental unit, shampooing the carpets, and undertaking various repairs. This occurred on or about December 27, 2018 and thereafter.

As to what her intentions were, S.W. "never told [D.L.] that [I] was moving in their myself." Rather, her intention was to evict the tenants so that she could take care of various repairs and cleaning. Indeed, on October 24, 2018, (the date that the Notice was signed and issued by D.L.) S.W. told D.L. that "the tenants had to go." D.L. responded that she had to have a good reason to evict the tenants. In response, S.W. said that "I need to get in there" to clean and fix the place, as nothing was being done.

After the cleaning and repairing was completed, S.W. contacted her realtor in January 2019 and relisted the rental unit for sale. The property was listed for sale in late January and sold within a week.

In her closing testimony, S.W. remarked that she "didn't ask to be a landlord," the property was "just a burden" and that she simply "didn't want to live there." (I note that S.W. is, or was, executor for her late husband's estate, which included the rental unit property to be administered by S.W.)

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.

In this dispute, the tenants claim that the landlords breached section 51(2) of the Act and as such are entitled to compensation.

Compensation for breach of section 51

Sections 51(2) and (3) of the Act states:

> (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.
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> (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
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> (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.

In this case, the landlords issued the Notice which stated that the purpose for ending the tenancy was so that the landlord S.W. or a close family member could occupy the rental unit. The evidence clearly establishes that S.W. took no steps between the effective date of the Notice of December 31, 2018 and the rental unit being sold at the end of January 2019 (a period of about one month) to accomplish the stated purpose for ending the tenancy. Nor, as the evidence proves, did S.W. use the rental unit for at least six months' duration after a reasonable period after the effective date of the notice.

Instead of occupying the rental unit herself, or by a close family member, the landlord S.W. immediately set about preparing the rental unit for sale and then listing it on the market.

I appreciate that S.W. never wanted to be a landlord. I empathize with her unfortunate burden of administering her late husband's estate. However, while the rental unit may have "just been a burden" to the landlord, this rental unit was also home to a young married couple. Whatever repairs or cleaning that may have been required are insufficient reasons to evict a couple from their home on the basis of this type of notice to end a tenancy. With respect, had the landlord wanted to rid herself of the burdens of being a landlord she had other options under the Act for doing so.

Based on the explanation given by S.W. as to the reasons for ending the tenancy, I do not find that there existed extenuating circumstances by which the landlords are exempt from section 51(2). It goes without saying that, as both landlords were parties responsible for issuing the Notice and for not complying with the Act, the parties are jointly and severally liable for any consequences of such a breach.

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 tenants have met the onus of proving their claim for compensation in the amount of $12,000.00 (12 times the monthly rent payable under the tenancy agreement) under sections 51 and 67 of the Act

Compensation for cost of filing fee

Section 72 of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party in a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenants were successful I grant their claim for $100.00 for the filing fee.

Conclusion

I hereby grant the tenants a monetary order in the amount of $12,100.00, the order for which must be served on both landlords. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims Division).

This decision is final and binding, except where permitted by the Act, and is made on authority delegated to me under section 9.1 of the Act.

Dated: July 16, 2019

Residential Tenancy Branch