



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$23,649.60 for monetary loss or other money owed, and to recover the cost of their filing fee. The Tenants seek compensation in the amount of 12 months' rent pursuant to section 51 of the Act. They say the Landlord did not use the rental unit for the purpose stated in the Two Month Notice to End Tenancy for Landlord's Use dated October 26, 2018 ("Two Month Notice").

The Tenants, the Landlord, the Landlord's son, A.V. ("Son"), and a lawyer for the Landlord (the "Lawyer") 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. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to 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 had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to 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 and any orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to the recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on May 1, 2017, with a monthly rent of \$1,895.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$947.50, and a pet damage deposit of \$947.50.

The Parties agreed that the tenancy ended, because the Landlord served the Tenants with a Two Month Notice with an effective vacancy date of December 31, 2018. The Parties agreed that the Two Month Notice was served on the Tenants by the Landlord having posted it on the rental unit door on October 26, 2018.

In the hearing, the Tenants said their claim has three parts:

1. Suspicion from the beginning;
2. Hard to prove that the Son doesn't live there;
3. Asian female in the rental unit when they went to check for mail.

1. SUSPICION

The Tenants said they were suspicious of the Landlord, because she always required the Tenants pay her a portion of their rent in cash. The Tenants said a month after they paid her the full rent via etransfer, they were served with the Two Month Notice "with no explanation or apology".

The Landlord responded to this by saying it is irrelevant to the Tenants' claim.

The Tenants also said that they were suspicious of the Son moving in to the rental unit, because they said he was already living in another of the Landlord's properties. The Tenants said that the Son told them that he was moving into the rental unit, because his condominium was being renovated. The Tenants said they did not believe this at all.

2. HARD TO PROVE

Under the Tenants' second point, they said that the Son was required to move into the rental unit within a reasonable timeframe and that they have documentary evidence that

he did not move in until May 2019. They said the Son's Insurance Corporation of British Columbia ("ICBC"), information did not change until they gave the Landlord notice of their Application for dispute resolution. They also said that a person does not have to actually live at a certain residence to change his address to that residence.

3. ASIAN WOMAN

The Tenants' third point is that an Asian female lived in the rental unit and that she is now claiming to be the Son's roommate, although she told them she signed a rental agreement. The Tenants said that the Landlord's evidence of this woman's statement on video is not equivalent to a sworn statement. They asked why the Landlord did not submit an affidavit from her or her boyfriend.

In terms of the Landlord's affidavits, the Tenants said that I should give them less weight, because they do not allow the Tenants to cross examine those who swore or affirmed their statements.

The Tenants said that they are suspicious of what is really going on in the rental unit and that they want the Landlord to show them what is going on beyond a reasonable doubt. At this point, I advised the Tenants that the standard of proof in this administrative review is on a balance of probabilities, not beyond a reasonable doubt.

The Tenants provided videos that they say demonstrate that the Son is not living in the rental unit and that it has been rented out to someone else. They say the first video shows "video of a new tenant occupying the unit. Reports signing a lease."

In this video, the Tenant, T.T., attends the rental unit, rings the doorbell and speaks to an Asian woman who answers the door. The Tenant asks this woman if she lives there and if she signed a lease, and she says she did sign a lease to live there. When the Tenant asks her how much rent she pays, the woman looks uncomfortable and the Tenant says that she does not have to answer. That is the end of the video.

The Tenants' second video is stated to be the Landlord collecting rent from a new tenant in the rental unit. This video shows different scenes from the backseat of a vehicle and then dark shots near a residential unit, including one of a woman opening a door and giving something to someone who cannot be seen in the video. It is not clear what she has given whoever is there in the darkness.

The Tenants' third video shows the Tenant, T.T., talking to a woman who answered the

door at the rental unit. The woman agrees that she had signed a lease with the Landlord to live at the rental unit.

In the hearing, the Landlord said that it is fair to say that she needs to demonstrate on a balance of probabilities that her version of events is more likely to be true than that of the Tenants. The Landlord said that the Tenants have set out their "suspicions", but not a lot of outside evidence to corroborate their suspicions.

The Landlord said that they have evidence from ten different people saying that the Son moved into the property at the end of November. The Lawyer said this includes statements from neighbours who are independent of the RTB proceedings. The Lawyer said that on a balance of probabilities, evidence far outweighs suspicions. He said that it is unreasonable to believe that ten people would conspire to lie to a tribunal on such a small matter as this.

The Lawyer said there is an enormous amount of objective evidence - not suspicion - on the Landlord's part. He said:

Under section 49 of the Act the key question is, did the Notice specify something that has happened. [The Son] moved in. He had friends help him and visit him there. Yes, he's had the roomer, but that's not relevant under the Act. A roommate is normally exempted under section 4, because they share a kitchen and bathroom. [The Son] has moved in and has been there for seven months. Motivations for why he's in there are irrelevant to the simple point that the Tenants were evicted because the Son was moving in. Has he moved in? The Tenants gave a 10 day notice, speeding up the process, so [the Son] was going to move in at end of December. The few weeks it took him to move in were not unreasonable.

In the hearing, the Tenants said:

There is overwhelming evidence that [the Son] did spend time there from November until now; we do acknowledge that their evidence shows that he has come to-and-from the property. He would do that to collect rent and do maintenance on the property. He could have come there due to problems that the other tenant had.

Also, aside from affidavits, where is the body of proof that he was living there from January to now? Where are utilities bills? The MSP and driver's licence are all dated from May, but what happened in January? It seems a little fishy. Where

are the income tax notices, MSP, where is that from January to April 2019?

Also, they rented to someone else, though they say this person is a roomer. She said she signed a rental agreement. That's convincing evidence on our end. [The Son] is saying in his own affidavit that no rent was collected from him; this is a way of trying to cover up that they rented it out to others.

We don't know what these neighbours would say – that someone else is living there who had signed a rental agreement? We actually do have evidence and are telling the truth.

The Landlord said:

I'd like to point out that they served the Notice [of hearing] on May 3rd or 4th. The ICBC registration is dated April 30. You're saying that everything was done after you served the Notice. That's incorrect.

The point is that we do not have to explain the quality our evidence. It is our evidence. If you are finding for the Tenant, you have to find that ten people have lied – half of them utterly disconnected to the process.

The bills always came in our name – the owner's name, like utilities bills.

The Tenants said: "Our point is that [the Son] might have lived there, but that doesn't change that they rented it out to someone else while he lived there."

The Son said the following in the hearing:

I was home when [the Tenant, T.T.] visited, and Mom asked me about their mail, because I was living at the home and was in regular contact with others in the property. I was also advised of previous visits by them.

Also, they keep mentioning from May onwards, but we have documents going all the way back to December: statements including from myself, and sworn affidavits knowing the legal consequences. And in case of pressuring people we were in touch with, they did so knowing what they were being asked to do. [The Tenants] didn't notify the parties that they were taking videos, but in our case, everyone was clearly notified of the reasoning and they had no benefit of their own to give evidence for us. Initially the [Tenants] move out day was December

31, but they moved out early. I did my due diligence to start moving into the property on November 28 – I was fully moved in by December.

The Landlord submitted a video taken by the Son, in which the woman seen in the Tenants' videos is answering the Son's questions. This woman said that she signed a "roomer" agreement with the son, and that she lived there temporarily (during a period of time that I cannot understand what she says). She said that the Son lived in the house the entire time that she did, and that she does not know the Landlord or her husband, who is alleged by the Tenants to have collected rent from this woman.

The Landlord submitted a document dated March 8, 2019, which states:

March 8, 2019

Roomer Agreement:

[Roomer's name] has agreed to stay in a room in the upstairs at [the rental unit address]. She will be sharing the home with [Son's name]. She will stay there from March 10 to April 15, 2019. She will pay a total of \$600 to [Son's name] for her stay. If the home is left clean and there is not damage, then [Roomer's name] would be fully refunded her \$250 deposit at the end of her stay.

[Roomer's signature and name printed]

[Son's signature and name printed]

The Landlord also submitted a video of the Son and his girlfriend introducing themselves, and saying that the girlfriend has lived at the rental unit since March 2019 and that she has not paid any rent to the Son or to anyone else.

The Landlord submitted their legal argument in a document, in which the Lawyer says that the Son moved into the rental unit on November 28, 2018, because the Tenants moved out earlier than they were required to under the terms of the Two Month Notice and the Act. The Lawyer says the Son has lived in the rental unit for the seven plus months leading up to the hearing.

The Landlord submitted an affidavit from her Son, in which he said he has lived in the top suite of the rental unit starting in December 2018. He said he does not pay the Landlord any rent or utilities costs for living there. He attached as Exhibit "A" to his affidavit, copies of his banking statements starting in December 31, 2018, and going to June 28, 2019, with his name and the rental unit address, but with his financial information redacted.

The Son's affidavit also includes:

- a copy of his ICBC insurance and registration dated May 2, 2019 to May 1, 2020, showing his name and the address of the rental unit;
- a copy of his driver's licence with the rental unit address. This driver's licence expires on December 17, 2023;
- a copy of his medical services plan of British Columbia with his name and the rental unit address; and
- copies of two magazine covers dated June and July 2019, with the subscriber information on the cover being the Son's name and address.

Exhibit "B" of the Son's affidavit is a copy of an automobile rental agreement dated November 27, 2018, between 3:25 and 6:00 p.m. Exhibit "B" also includes a vehicle rental contract for November 29, 2018, between 12:08 and 2:47 p.m. It also includes a copy of a rental agreement with a different automobile rental company for the rental of a van to the Son dated December 21, 2018 between 8:03 a.m. and 11:30 a.m. However the Son's address on these invoices is not the rental unit address.

The Landlord submitted an affidavit from her husband, in which he said his Son has lived at the rental unit continuously, since December 2018, and that the husband has not collected any rent from anyone living in the top floor suite of the rental unit. He said he has only collected rent from the tenants living in the lower floor of this residential property.

The Landlord said her Son had one roomer in the rental unit in March 2019, but that the Landlord asked him to stop this practice, which he did after the roomer left in April 2019.

The Landlord argues that she is not required by the Act to pay the Tenants the compensation they seek, because:

- The Two Month Notice has not been contested as invalid;
- The Tenants moved out earlier than required;
- A close family member of the Landlord moved into the rental unit as quickly as he could;
- As of the date of the submission, the close family member has lived in the unit for a continuous seven months; and
- A roommate brought into the rental unit by the close family member does not offend section 51 of the Act, because the close family member remained in the rental unit during this time.

In her affidavit dated July 9, 2019, the Landlord said that she told the Tenant, T.T., that her Son would be moving into the rental unit after the Tenants vacated it.

The Landlord submitted an affidavit from F.J.C. which states:

1. I have been a resident of [the City] for many years.
2. I am a very close friend of [the Son].
3. In December 2018 and January 2019, I helped [the Son] with cleaning and organizing his furniture and belongings at the top floor suite of the house located at [rental unit address].
4. Being his close friend, I have visited [the Son] at the Unit several times since December 2018 to spend time together.
5. I can confirm that [the Son] has been living continuously at the Unit since December 2018, and is also currently living there.

Sworn and signed by the Affiant before a commissioner for taking affidavits on July 8, 2019.

In another affidavit the Landlord submitted dated May 27, 2019, a friend of the Son indicates that the Son was the best man at his wedding. This Affiant said that he helped the Son move furniture to the rental unit in November and December 2018. The Affiant said he has visited the Son at the rental unit several times since December 2018. He said that when he sold his house, the Son invited him and his wife to stay at the rental unit for part of May 2019. He said they did not pay the Son anything for staying there, as they were the Son's guests. This affidavit was sworn and signed by the Affiant before a commissioner for taking affidavits on May 27, 2019.

The Landlord submitted an affidavit from a neighbour, P.J. (the "Neighbour"), saying that the residential property is adjoined to his house. He said he saw the Son move his furniture into the house in December 2018. The Neighbour said he has seen the Son's vehicle parked in front of the rental unit on a regular basis since then. He said: "Being the next door neighbour I can confirm with full confidence that [the Son] lives in the top floor of [rental unit address]." This affidavit was sworn and signed before a commissioner for taking affidavits on June 24, 2019.

The Landlord also submitted a letter dated June 5, 2019, signed by a person identifying herself to be the Son's neighbour from directly across the street from the rental unit. This person described much the same evidence as did the Neighbour, and signed the letter with her telephone number, inviting the reader to call "if you have any questions in

this regard.”

The Landlord had submitted other affidavits and statements, to which I find it unnecessary to refer.

When asked for their final statements in the hearing, the Tenants said:

When the Landlord collects rent from the basement, he uses the door in the back, but he knocked at the front door in the video. I think we made our case and brought up our concerns and evidence.

For the Landlord’s final statements in the hearing, the Lawyer said:

It’s fair to describe that the Tenants have the onus to prove that the [Two Month] Notice was not fulfilled. We have said that they have not been able to do that - just lots of suspicions.

From [RTB] Policy Guidelines, if the Two Month Notice is called into question, the Landlord has to show good faith. We submit is that the evidence shows you that 10 people, some affidavits, some connected, some just neighbours, said the same thing - that [the Son] moved in at end of November and has lived there since then. That’s a good faith measure – what did actually happen. Maybe if there were lots of advertisements for this to be re-rented for \$3,000.00 per month. But we don’t have that going on. The Landlord has lost money, because she loves her son. In good faith, can you say that on a balance of probabilities [the Son] has not been living there since the end of November? Therefore compensation under section 51 not payable and their claim should be dismissed.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

As the Lawyer said, the Landlord submitted eight affidavits and two letters from different persons supporting the Landlord’s position. I have read, but not detailed all of these submissions, as I find them to be internally consistent with each other.

I find that the Tenants’ video submissions are confusing and not inconsistent with the Landlord’s position. For instance, the Tenants’ evidence is that the Asian woman at the

rental unit admitted to having signed a tenancy agreement. The Landlord's evidence is that the Son had her sign an agreement to be a roommate or roomer.

I find that the Tenants' evidence does not establish facts that they say it does. I find on a balance of probabilities that the Tenants' evidence does not support their position that the Landlord has rented the rental unit to someone other than her Son.

I find I agree with the Lawyer that the Landlord's submissions provide sufficient evidence that the Landlord has used the rental unit for the purpose stated in the Two Month Notice. I also find that the Two Month Notice complies with section 52 of the Act.

Accordingly, I dismiss the Tenants' Application without leave to reapply. As the Tenants are unsuccessful, I do not award them recovery of the \$100.00 Application filing fee.

Conclusion

The Tenants were unsuccessful in demonstrating on a balance of probabilities that the Landlord did not use the Two Month Notice for the stated purpose. Accordingly, and pursuant to section 51(2) of the Act, I dismiss the Tenants' Application without leave to reapply. I have also dismissed the Tenants claim for recovery of the \$100.00 Application filing fee.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: August 07, 2019

Residential Tenancy Branch