Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $13,800.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord's grandson attended the hearing on the landlord's behalf and acted as her agent. Both were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with her evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to:

1) a monetary order for $13,800.00 representing 12 times the monthly rent; and
2) recover her filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant entered into a written tenancy agreement with her former landlords on August 15, 2019. Monthly rent was $1,150.00. The tenant paid her former landlords a security deposit of $575.00 and a pet damage deposit of $575.00. Shortly after entering into this tenancy agreement the former landlords sold the rental unit, and the agreement was assigned to the current landlord.

The tenant and the current landlord were previously involved in a dispute resolution before another arbitrator related to issues different than those which form the subject of this hearing. The result of the previous hearing included an order that the current landlord return the deposits to the tenant.

The landlord issued a Two Month Notice to End Tenancy (the "**Notice**") on June 5, 2018. The effective date of the Notice was August 31, 2019. A copy of the Notice was not entered into evidence, but the parties agree that the reason for issuing the Notice indicated on the Notice was that rental unit was to by used by the landlord for her own occupation.

The tenant testified, and the landlord's agent agreed, that the tenant vacated the rental unit on August 2, 2019.

The tenant testified that during the course of the tenancy she understood that her landlord was "C". In fact, at the end of the tenancy, she discovered that the landlord was actually the landlord named on this application for dispute resolution. "C" is the landlord's daughter.

During the hearing, the tenant accepted that the landlord named on this application was, in fact, her landlord, and that "C" was not her landlord.

The tenant alleges that the landlord never moved into the rental unit after she vacated it.

The landlord's agent testified that the landlord moved into the rental unit "a week or two" follow the tenant vacating the premises. In support of this, he provided copies of documents including:

1) BMO Change of Address Confirmation showing the landlord changing her address to that of the rental unit as of December 2018;
2) Property Insurance Policy and Statement of Account in the landlord's name for the rental unit as of March 22, 2019;
3) BC Hydro Invoices in the landlord's name for the rental unit, the earliest of which is dated August 7, 2018; and
4) Internet Invoices in the landlord's name for the rental unit, the earliest of which is dated September 1, 2018 and the latest of which is dated June 23, 2019.

The tenant did not provide any evidence which supported her assertion that the landlord did not move into the rental unit. Rather, the tenant argued that the landlord did not provide adequate proof that she had moved into the rental unit. She argued that she would have expected additional documentation entered into evidence to support the landlord's assertion, including mover's receipts, bank statements from the account used to receive the tenant's monthly rent, PharmaCare invoices, dental invoices, and voter registration cards, to name but a few.

The tenant argued that she believes the landlord is using the rental unit as an AirBnB or has re-rented the rental unit. She provided no evidence to support either of these allegations.

Throughout the hearing, the tenant referred to the landlord's failure to act in good faith, examples of this being the confusion as to the identity of the landlord during the tenancy, the difficulties the tenant had in collecting on a prior monetary order, and the landlord changing the name of the payee on the tenant's rent cheques (from "C" to the landlord).

The landlord's agent argued that he had provided evidence sufficient to show that the landlord resided at the rental unit, and as such, the tenant was not entitled to a monetary order. He denied that the landlord acted in bad faith.

Analysis

Relevant Authorities

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**

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 most circumstances this is the person making the application.

Section 51(2) of the Act grants an arbitrator the authority to make a monetary award equal to 12 times the monthly rent. It states:

> **Tenant's compensation: section 49 notice**
>
> 51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
> (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.

Applied to the case at hand, the tenant bears the onus to show that it is more likely than not that the rental unit was not used for the stated purpose on the Notice for at least six months after the effective date of the Notice.

Good Faith

I note that section 51 does not have a “good faith” requirement. Such a requirement is referenced in section 49(3), which reads:

> **Landlord's notice: landlord's use of property**
>
> 49(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.

However, section 49(3) applied only to applications where the tenant is applying to *cancel* a notice to end tenancy. This is not the case here, where the tenancy has already ended. As such, I place no weight on the conduct of the landlord or her agents as it relates to the tenant's argument that the landlord failed to act in good faith. Such conduct is not relevant to this application.

Application of authorities to the facts of this case

I accept both parties' testimony that the stated purpose for the landlord's issuance of the Notice was that the rental unit was to be occupied by the landlord.

Based on both parties' testimony, I find that the landlord named on this application is the landlord.

I find that the tenant has not provided enough evidence to discharge her evidentiary burden (per Rule 6.6) to prove that the landlord does not live in the rental unit. Rather than provide documentary evidence, the tenant provides speculation as to the current use of the rental unit. She suggests that it has been re-rent or is listed on AirBnB but provides no rental advertisements or listings. Without any corroboration, I attach no weight to the tenant's speculations.

The tenant's argument that the landlord has failed to provide sufficient evidence that she lives in the rental unit appears to be based on a misapprehension of the evidentiary burden. Under Rule of Procedure 6.6, the landlord does not bear the onus to prove that she moved in, rather, the tenant bears the onus to prove that she did not. I find that she has failed to provide any evidence to show that the landlord did not move into the rental unit and does not currently reside there. While additional documentation from the landlord showing the landlord resides in the rental unit may have bolstered the landlord's claim she moved into the rental unit, such documents not necessary for her to prove that she did.

I do not find that the absence of the documents listed by the tenant to be persuasive evidence that the landlord does not reside in the rental unit.

I find that the documents entered into evidence by the landlord are sufficient (absent any documentary evidence to the contrary) to show that the landlord currently resides in the rental unit. I accept the landlord's agent's evidence that the landlord moved into the

rental unit within a “week or two” of the tenant vacating the rental unit. The invoice from BC Hydro dated August 7, 2018 supports this time frame.

Based on the other invoices, including that for internet dated June 23, 2019, I find that the landlord has resided in the rental unit for at least six months following the effective date of the Notice.

As such, I find that the tenant has failed to show that the rental unit is not used for that stated purpose for at least six months' duration. Accordingly, I dismiss the tenant’s claim.

As the tenant was not successful, I decline to order that she be reimbursed her filing fee.

Conclusion

I dismiss the tenant’s application, in its entirety.

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: September 10, 2019

Residential Tenancy Branch