



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenants' 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 pursuant to section 67.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenants' application and evidence submissions on file.

Issues

Are the tenants entitled to a monetary order for compensation for damage or loss?

Background & Evidence

The tenancy for this house began in 2015. The rental unit was an entire 2 storey house in Surrey, BC.

On June 21, 2018, the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") with an effective date of September 1, 2018. The notice was issued on the grounds that the landlords intended to occupy the rental unit in order to accommodate their growing family.

In a decision dated October 19, 2018 (file# 31026025), the landlord was granted an order of possession pursuant to the Two Month Notice with an effective date of October 31, 2018. The tenants vacated sometime in early November 2018.

The monthly rent prior to the end of the tenancy was \$1918.45.

The tenants are claiming an amount equivalent to twelve times the monthly rent as compensation for the landlord not using the rental property for his own use after issuing the Two Month Notice.

In support of their claim the tenant A.A. testified as follows:

- After vacating the rental unit in early November 2018 he kept an eye on the activities at the house and there was no appearance of anybody living in the house over the next five month period.
- He would drive by the house at various times throughout the day at least three times per week. He never observed the landlord or his vehicles at the property during this time.
- He would occasionally request to pick up mail from the house for which the landlord would meet him at the house.
- Beginning in March 2019 the landlord advised him to start meeting him at a nearby gas station to pick up the mail.
- On March 31, 2019 he observed a large south Asian family working out in the yard and it appeared they had moved into the house.
- He spoke to a couple neighbors who told him that two different families had moved into the house.
- Previously there was a small studio suite in the basement which one of his sons had occupied. There was access to the suite from main house through French doors. The landlord had now put a wall up to separate this suite from the main house.
- The studio suite is just a small room with a small bathroom and small kitchen area.
- There is no way the landlord and his family could have lived there, and he did not live there.

The tenant also referred to two previous disputes between the parties. In a decision dated August 19, 2017 (file# 863562), the landlords' application for an order of possession based upon end of a fixed term tenancy was dismissed. In a decision dated November 28, 2017 the landlords' application for an order of possession based upon a One Month Notice to End Tenancy for Cause was dismissed.

The tenant submits that the landlord was attempting to end the tenancy previously and did eventually succeed in ending it in order to increase the rent. The tenant submits the landlord previously asked him to start paying \$2400.00 per month.

The tenant submits that it is not difficult to get an address changed on bills in response to the various documents submitted by the landlord as support of occupying the rental unit.

The landlord B.S. testified and responded to the tenants claim as follows:

- On November 1, 2019 they started to move some belongings into the basement suite as the tenant's son had left.
- On November 15, 2019 him and his family (his wife, preschool aged daughter and newborn son) were fully moved into the basement suite.
- They lived in the basement while they were renovating the upstairs to make it livable for their family.
- They lived in the basement suite until February 1, 2019 at which time they moved upstairs.
- On April 1, 2019 they moved back into the downstairs suite due to financial reasons. The renovations and the fact that the landlord B.S. got accepted into the SFU Masters Program had put them in a financial hole.
- Effective April 1, 2019 they rented out the upstairs portion of the house to new tenants.
- On July 1, 2019 due to ongoing financial strain they moved out of the basement back into their parents' home in Vancouver, BC where they had originally resided. They originally rented a suite in their parents' home but now they moved back in with their parents where they could save on paying rent.
- The landlords had intended to occupy the upstairs portion of their own house, but they were not able to sustain this as planned due to finances.

In support of their position, the landlord submitted the following documents:

- A signed statement from the new upstairs tenant stating that the landlord's family resided in the basement up until July 1, 2019.
- A hand written receipt for payment of 30% of the hydro bill to the new tenant dated July 17, 2019. The landlord submits the Hydro was in his name until March 2019 after which it was put in the new tenant's name.
- Copies of Hydro bills prior to March 2019 in the landlord's name showing the rental unit as the mailing address.

- Copy of a 3-year alarm monitoring contract with ADT showing the landlord's name and address. The landlord submits the alarm system was installed in February 2019 after they had a break-in.
- Copy of the house insurance showing the rental unit as the billing address.
- Copy of bank statements and Fortis BC bills showing rental unit as the mailing address.
- A copy of a completed application for their daughter to attend a pre-school close to the rental unit.
- Copy of acceptance letter into SFU Masters program.
- Bank statements to show debt on line of credit account.
- Invoices for flooring renovation and door installation.

Analysis

Section 51 (2) of the Act provides that if 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 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 the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

Pursuant to section 51(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:

- (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.

On a balance of probabilities, I find that the landlord did not occupy the rental unit at all after the tenants vacated the rental unit. I make this finding for the following reasons:

First, the landlord issued the notice to occupy the rental unit to accommodate his growing family. However, the landlord states he first ended up residing in the small studio suite with his family of four while he was doing renovation work on the upstairs portion. I find this unlikely especially considering the landlords could have stayed with their parents during this time which is where they were living both before and after this

period. The landlord has only submitted one receipt for carpet replacement and one receipt for replacing a couple doors. Yet the landlord submits they resided downstairs for a period of nearly 3 months while renovations took place upstairs. I find it improbable that this minor amount of renovation work took close to 3 months. I also find it unlikely that the landlord moved upstairs for a brief 2-month period only to move back into the small studio suite and then move back in with their parents after another 3-month period. The tenant on the other hand provided forthright, sincere and consistent testimony. I accept the tenant's testimony that he observed the rental unit over this period and the entire rental unit remained unoccupied until April 1, 2019 when the landlord re-rented the upper portion of the home.

Second, I find the various bills and documents issued by the landlord containing the landlord's name and address of the rental unit do not actually support a finding that the landlord occupied the rental unit over this period. In fact, the landlord submitted a Fortis BC statement dated August 13, 2019 for the billing period of July 11, 2019 to August 13, 2019 which is still in the landlord's name and address even though the landlord supposedly moved back out of the rental unit by this time. Similarly, a bank statement dated July 31, 2019 also still indicated the rental unit address as being the landlord's address. According, I find these statements on their own do not conclusively support a finding of occupancy by the landlord. The fact the landlord had the Hydro in their name up until March 2019 does not support that they were occupying the rental unit. The landlord would still have had to get the Hydro switched to their name while the unit was empty or while doing renovation work.

Third, I give no weight to the statement from the current tenant that the landlords were residing in the basement as the landlord did not call this tenant to testify during the hearing in order for this statement to be questioned.

Fourth, the alarm monitoring contract also does not support the unit was occupied. There was a break-in that occurred in January 2019 and it is reasonable that the landlord got an alarm installed to protect the house whether or not it was occupied.

Fifth, I find the most potentially significant piece of evidence in this case was the landlords' daughter's pre-school application. The landlord submitted an application but not any evidence of actual enrollment. I find if the landlord's daughter was in fact enrolled in pre-school nearby the rental unit, it would have been very easy for the landlord to submit proof of enrollment such as a letter from the pre-school or receipts of registration payments. The landlord provided no such evidence.

Lastly, given the history of disputes between the parties and the fact that the landlord unsuccessfully attempted to end the tenancy on two previous occasions, I find the landlord did not end this tenancy with the intention to occupy the rental unit.

I find the landlord's explanation of financial hardship due to renovations and tuition fees are not extenuating circumstances that prevented the landlord from occupying the rental unit. These are both circumstances which could have been anticipated.

I allow the tenants' claim and award an amount of \$23,021.40, which is twelve times the monthly rent of \$1918.45.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant's a Monetary Order in the amount of \$23,021.40. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 10, 2019

Residential Tenancy Branch