



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, FFT

Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$22,200
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on or about July 25, 2019. The landlord acknowledged receipt of the Application. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began in May 2016. The rent at the time the tenancy ended was \$1850 per month payable on first day of each month. The tenant(s) paid a security deposit of \$900 and a pet damage deposit of \$450 at the start of the tenancy.

On April 5, 2019 the landlord served a 2 month Notice to End Tenancy on the Tenants setting the end of tenancy for June 30, 2019. The grounds set out in the Notice was for was that the “rental unit will be occupied by the landlord or the landlord’s close family member (parent, souse or child, or the parent or child of that individual’s spouse).”

The tenants gave a 10 day Notice to End Tenancy and the tenancy ended on April 30, 2019.

The tenants testified they received a text message that they required that the keys be returned early so that a real estate agent could look at the property. They further testified that some time in early June they became aware that the property had been listed for sale with a real estate agent.

The landlord did not provide documentary evidence to support this testimony apart from a short summary and a death certificate of a family member in China. However, landlord gave the following oral evidence at the hearing. :

- A family member living in China became seriously ill they had to move back to move back to China to be with her and other family business
- Hospital fees for a patient in ICU in China are very expensive. As a result they decided that they would have to sell the property to allow them to support the family member while she was in hospital.
- The family member passed away at the end of June 2019.
- The landlord’s advised the tenants in March by text message that they were going back to Chine.
- They should have given the Tenants a one month Notice to End Tenancy for repeated late payment of rent.
- They cancelled the listing agreement with the real estate firm in early July after the family passed away.
- They spent time in China in August and September. When they returned they lived in the rental unit.
- They rented a rental unit in Richmond on May 1, 2019 so that their son could be closed to his piano teacher and so that her parents could live when they visited Canada. They are living in this unit at the present time.
- As on November 1, 2019 they rented the rental unit to a third party.

Section 51(2) and (3) of the Residential Tenancy Act provides as follows:

51 (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.

(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.⁵¹

Analysis:

An arbitrator is legally obliged to follow the law including the Residential Tenancy Act even if the result may appear excessive. After carefully considering all of the evidence I determined the Tenants are entitled to the claim that they are making for the following reasons:

- The landlord served a 2 month Notice to End Tenancy for family use that set the effective date of the Notice as June 30, 2019. It was in the approved government form. The ground set out in the Notice to End Tenancy was for family use.
- The rental property was listed for sale in May 2019 or June 2019 after the tenants vacated.
- I accept the landlord's explanation that they did not move in the rental unit for May 2019, June 2019 and July 2019 because they had to return to China to be

with a family member who was in an emergency situation. I am satisfied this amounts to a reasonable excuse for the failure to move in promptly.

- However, the landlord failed to prove they occupied the rental unit in the period after the effective date of the Notice. The landlord was away in China for much of August and September.
- The landlord failed to provide sufficient evidence that she occupied the rental unit in October 2019. They rented a rental unit in Richmond which is closer to her son's teacher. The landlord failed to provide sufficient evidence to prove she occupied the rental unit in October. I determined the landlord failed to prove they moved into the rental unit within a reasonable period of time after the effective date of the Notice as required by the Act.
- The landlord testified she has rented the rental unit as of November 1, 2019. It is no longer possible for the landlord to use the rental unit for the stated purpose for at least six months duration beginning within a reasonable time after the effective date of the Notice.
- The landlords failed to prove that they moved into the rental unit for at least 6 months within a reasonable time after the effective date of the Notice.
- I determined the landlord failed to provide extenuating circumstances which prevented the landlord from doing what the Notice to End Tenancy stated.
- The monthly rent is \$1850 per month. The tenants have established they are entitled to the equivalent of 12 months rent or the sum of \$22,200.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$22,200 plus the sum of \$100 in respect of the filing fee for a total of \$22,300.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In conclusion I ordered the landlord to pay to the tenant the sum of \$22,300.

The tenants acknowledged the amount claim is significant and they were prepared to enter into settlement discussions with the landlord. The law compels an arbitrator to

make this order. However, the parties are free to come up with a settlement amount should they both agree.

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: November 18, 2019

Residential Tenancy Branch