Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EIGHTLAND PROPERTIES INC
and [tenant name suppressed to protect privacy]

DECISION
FFT MNDCT

Dispute Codes

Introduction

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

- a monetary order for $21,500 representing 12 times the amount of monthly rent, pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The individual landlord (hereinafter, the "**landlord**") attended the hearing on behalf of himself and on behalf of the corporate landlord. Both were 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 she served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that he served the tenant with his 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 $21,500 equal to 12 times the monthly rent; and
2) recover his filing fee from the landlord?

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 rental unit is the lower suite in a two-suite, single detached house. The tenant and the corporate landlord entered into a written tenancy agreement starting April 1, 2013. At the end of the tenancy monthly rent was $1,460 and was payable on the first of each month. The tenant paid the corporate landlord a security deposit of $625 and a pet damage deposit of $300. The corporate landlord returned these deposits at the end of the tenancy.

On December 27, 2019, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property (the "**Notice**") effective February 28, 2019. It stated 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's spouse)".

I note that the option on the Notice indicating that the landlord is "a family corporation and a person owning voting share in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit" was not selected. However, neither party referenced this fact during the hearing. Indeed, the tenant did not make any distinction between the corporate landlord and the landlord in either her written or oral submissions. Nor did she provide any evidence relating to whether the corporate landlord was a "family corporation". I will address this issue later in the decision.

The tenant vacated the rental unit on February 28, 2019.

Tenant's Submissions

The tenant testified that the landlord told her that his son was going to move into the rental unit as he needed somewhere to stay while he was going to school.

She testified shortly after being served with the Notice, the landlord spoke with her and offered to let her stay in the rental unit if she paid $1,700. She entered an extract of a text message conversation with the landlord dated January 3, 2019, where she writes "hi [landlord], thank you for your offer of $1700/mos unfortunately we can't afford that

much of a rent increase. Thanks again". The landlord responded, "Ok thanks for letting me know".

She testified that the landlord's son never moved into the rental unit, and that the rental unit was rented to new occupants in May 2019 for an increased rent.

She entered three letters from former neighbours who live near the rental unit. In the first, the neighbour ("**KW**"), in an undated letter, wrote:

> The current occupants of [the rental unit] are not related to the owner of the property. There are two nurses, both female, living in the illegal basement suite and two middle aged men living upstairs. The owner's son who just finished high school sometimes parks his car in the driveway and then walks down the street to his residence, but never stays at the house or goes inside.

The second neighbour ("**RH**"), in an undated letter, wrote:

> …after the tenant moved out of the basement suite of [the rental unit] no [landlord's last name] moved in. There are some younger women downstairs and middle-aged men upstairs.

The third neighbour ("**CT**"), on July 30, 2019, wrote:

> I knocked on the door of [the rental unit] on July 28, 2019. A young woman answered the door. She stated that she had been living there since May.
>
> She stated the landlord's son and/or family was not residing there.
>
> She stated as far as she knew the previous tenant was an older lady.

The tenant testified that she believed that the landlord wanted to evict her so he could get a new tenant who would pay more in rent.

The tenant argued that the landlord's son never moved into the rental unit, and as such, it was not used for the purpose stated on the Notice and that she is entitled to an award of 12 times the monthly rent as a result.

Landlords' Submissions

The landlord testified that the rental unit was currently rented to individuals who were not close family members. He testified that, when he issued the Notice, his intention was to rent the rental unit to his son. He testified that his son lived in the lower mainland at the time the Notice was issued, and that his son intended to move to the interior (the region in which the rental unit is located) for a job.

The landlord testified that his son was unemployed in late 2018, and applied to a variety of jobs, and obtained a position as a cook in the interior starting April 1, 2019. The landlord testified he then served the Notice on the tenant.

The landlord testified that, after doing so, he felt bad to the tenant and offered to let her stay in the rental unit for $1,700. He said he did this because that amount was what the suite above the rental unit rented out for, and he could issue a notice to end tenancy to the tenants living in that suite so as to allow his son to move in to that unit instead.

The landlord testified that his son moved into the rental unit on March 4, 2019 (four days after the effective date of the Notice). He testified that his son resided in the rental unit until April 8, 2019, when he returned to the lower mainland. He testified that his son was offered a government job (with benefits) in the lower mainland at some point (I am unsure of the date) after he moved into the rental unit.

The landlord's son made a written statement dated October 21, 2019, which the landlord entered into evidence. It stated:

> I moved from [the lower mainland] and rented the [rental unit] from my dad in March 2019. I signed a one year lease starting March 1, 2019 and intended to stay for the full term. Unfortunately, due to circumstances first with roommates opting out to stay with me with me, reducing my monthly rent payment and then later offered a full-time job opportunity with [a crown corporation], I left the leased premises April 8, 2019. I moved back to [the lower mainland], and am now working with [a crown corporation] on a fulltime basis in [the lower mainland].

The landlord entered into evidence a copy of a one-year, fixed-term tenancy agreement between his son and the corporate landlord dated March 1, 2019.

Analysis

The basis for the tenant's application can be found at section 51(2) of the Act, which states:

> 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
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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
>
> (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.

Section 51(3) of the Act states:

> 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.

Amendment to the Notice

As noted above, the tenancy agreement is between the corporate landlord and the tenant, but the Notice indicates that the landlord or a close family member of the landlord would be moving into the rental unit. As a corporation does not have close family members, this is obviously not possible.

As the landlord named on the tenancy agreement is the corporate landlord, reason for ending the tenancy on the Notice should have been that landlord is "a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit."

Neither party addressed this issue during the hearing, and I have no basis to believe that either party turned their mind to this deficiency in the Notice. The parties proceeded on the basis that the reason stated on the Notice was correct in the circumstances, and the tenant's submissions did not focus on any distinction between the individual landlord and the corporate landlord.

As such, I find it is reasonable in the circumstances to amend the Notice, pursuant to section 68 of the Act, so that the basis to end the tenancy is that landlord is "a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit."

This amendment gives effect to the submissions of both parties and allows me to decide this case on these submissions.

Neither party provided any evidence as to whether the corporate landlord was a family corporation or if the landlord was a "person owning voting shares in the corporation". As it is her application, the tenant bears the onus to prove that the corporate landlord is not a family company or that the landlord does not own voting shares (per Rule of Procedure 6.6). She provided no evidence on this basis. As such, I find that she has not met her burden, and accordingly that the corporate landlord is a family company, and that the landlord owns voting shares in the corporate landlord.

As such, I find that the landlord's son is a close family member of a person owning voting shares in the corporate landlord.

Post-Tenancy Rental Unit Use

The parties do not dispute that the rental unit is currently rented out to individuals who are not close family members. The parties disagree on whether the landlord's son ever moved into the rental unit. The tenant takes the position that he did not. The landlord argues that he did.

The evidence provided by both parties in support of their respective positions is lacking. The tenant relies on the statements of three witnesses, none of whom were called to give testimony at the hearing. In the first statement KW makes the categorical declaration that the tenant's son "never stays at the house or goes inside". I do not accept that KW continuously monitored the rental property so as to be able to

definitively say who came and went from the rental property at all times. Rather, I understand her evidence to mean that she never witnessed the landlord's son staying at or entering the rental unit. This may be true. However, that does not mean that he never did. Without hearing evidence from KW as to the frequency with which she monitored the rental unit, I do not assign much weight to her evidence.

For similar reasons, I assign little weight to RH's letter in which she wrote "after the tenant moved out of the basement suite of [the rental unit] no [landlord's last name] moved in".

I find CT's letter to be have more probative value. I accept that she attended the rental unit on July 28, 2019 and was told by one of the occupants that they had lived there since May. However, I do not find that just because that individual who answered the door said that they believed that the "previous tenant was an older lady" means that this was actually the case. I am not sure what basis the current occupant of the rental unit purported to have knowledge of the identities of the past tenants, as no current tenant was called to given evidence, or asked to provide a written statement. As such, I find the truth of the statement of the current tenant to CT to be unreliable. As such, I assign it no weight.

The landlord entered a written statement from his son addressing the issues directly. While this letter is not as detailed as it could be (for example, by providing a specific date of when he was offered the job in the lower mainland), I find that the information that it does provide to be reliable, as it recounts firsthand in information. I have no reliable firsthand information from the tenant to contradict the landlord's son's statement.

As such, I accept the landlord's version of what happened at the end of the tenancy over that of the tenant. Where the testimony of the tenant and the landlord differ, I prefer that of the landlord.

As such, I accept the landlord's explanation as to why he offered to re-rent the tenant that rental unit at a higher rate.

I find that the landlord's son occupied the rental unit starting March 1, 2019 and left the rental unit on April 8, 2019 to take a job in the lower mainland.

Extenuating Circumstances

Even though I have preferred the landlord's version of events to that of the tenant's, this does not necessarily mean that the tenant is not entitled to the relief sought. The landlord's version of events describes a situation where the rental unit was not used for the purpose stated on the Notice for a period of six months following the effective date of the Notice. This is enough to meet the requirement set out at section 51(2)(b) of the Act.

As such, the landlord must show that his son's circumstances amount to an extenuating circumstance, and therefore excuse him the 12 times the monthly rent penalty set out in section 51(2) of the Act.

Section 51(3) grants me the discretion to excuse the landlord from paying the 12 times monthly rent penalty if the landlord can show that extenuating circumstances existed to prevent the rental property from being used for the purpose stated on the Notice.

Policy Guideline 50 discusses extenuating circumstances:

> These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:
> - A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
> - A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
> - A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.
>
> The following are probably not extenuating circumstances:
> - A landlord ends a tenancy to occupy a rental unit and they change their mind.
> - A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

The common factor in all the examples of extenuating circumstances listed above is that the circumstances described are beyond the landlord's control and significant enough to prevent the intended use. This makes sense, as it would be unreasonable and unjust to

punish a landlord for something over which he had no control that prevents him from using the rental unit for the stated purpose.

In the circumstances, I find that it would be unreasonable and unjust to require that the landlord pay the tenant 12 times the amount of monthly rent. The circumstances that led to his son's leaving the rental unit were beyond his control. Additionally, it would be unreasonable and unjust to incentivize the landlord to attempt to prevent his son from taking a job he wanted.

As such, I find that extenuating circumstances existed to excuse the fact that the rental unit was not used for the purpose stated on the Notice for a period of six months following the effective date of the Notice.

Conclusion

I dismiss the tenant's application, without leave to reapply.

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: December 18, 2019

Residential Tenancy Branch