



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Matter – Applicants Evidence

Counsel for the landlord advised that although the tenant referred to photos of vehicles in the driveway as part of her package, the tenant did not provide them to the landlord. Counsel further advised that the USB stick submitted by the tenant was served on the landlord only a week prior to the hearing and is prejudicial as the evidence is late and does not comply with the Residential Tenancy Branch Rules of Procedure.

The tenant testified that she was sure that she had submitted the photos but "I can't prove that I did". As for the USB stick, the tenant only stated "I admit it was late, my bad". Based on the above I find that the tenant has not complied with Residential Tenancy Branch Rules of Procedure 3.14 and has failed to provide sufficient reasons or justification as to why she hasn't, accordingly; the photos and USB stick are not admissible for this hearing and have not been considered in making a decision.

Issue(s) to be Decided

Is the tenant entitled to 12 months of rent as compensation as a result of the landlords' failure to comply with grounds for issuing a notice to end tenancy?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenant gave the following testimony. The tenant testified that she moved into the unit on May 1, 2017. The tenant testified that the monthly rent of \$2000.00 was payable on the first of each month. The tenant testified that on February 28, 2019 the landlords served her with a Two Month Notice to End Tenancy for Landlords Use of Property for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The tenant testified that the landlord advised her that he and his wife would be moving in, but later stated that their daughter was going to move in. The tenant testified that she drove by the property numerous times and noticed cars parked on the property that she didn't recognize. The tenant testified that her coworkers also drove by the property and noticed unfamiliar vehicles onsite. The tenant testified that the landlords didn't use the property for the stated purpose on the notice and therefore should compensate her twelve months of rent for an amount of \$24,000.00. The tenant also seeks the recovery of the filing fee.

Counsel made the following submissions. Counsel submits that the property was not rented out to anyone. Counsel submits that the landlords have possession of the unit and due to some structural issues, was unable to live in the unit. Counsel submits that the landlords use the unit for storage and occasionally allow friends to use it on a short term basis but not in the usual landlord tenant arrangement.

Landlord CT gave the following testimony. CT testified that due to structural issues with the foundation, the unit is uninhabitable but is sufficient to store tools, supplies and other items that are used on the property. CT testified that this is acreage property and that all sorts of tradesmen are onsite at any given time and explains the unfamiliar cars

on the property. CT testified that he and his wife had every intention of moving in, “but a better option became available” and moved into another unit on the property.

Analysis

I have turned my mind to the following relevant sections of the Act, and the Residential Tenancy Policy Guidelines in coming to a decision.

Residential Tenancy Policy Guideline 2(c) addresses the issue before me as follows:

2. C. OCCUPYING THE RENTAL UNIT

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see also: Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy to move into the rental unit if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

Vacant possession

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (**see Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

In CT’s own testimony he advised that he did not live in the unit but is only using the space for storage. CT testified that there are structural issues with the unit that prohibit it from being occupied, however; the landlords did not provide sufficient evidence of that

or other extenuating circumstances that may have relieved them of their obligation under the Act.

Given the testimony of CT, I find that the landlords have not met their obligation under section 49 of the Act and have not used the unit for the stated purpose of ending the tenancy for at least 6 months.

Given my finding, I now turn and consider section 51 of the Act:

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
 - (a) 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
 - (b) 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 months rent payable under the tenancy agreement.

Based on the above, I hereby find that the tenant is entitled to 12 months rent as compensation for an amount of \$24,000.00.

The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenant has established a claim for \$24,100.00 I grant the tenant an order under section 67 for the balance due of \$24,100.00. This order may be filed in the Small Claims 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: December 09, 2019

Residential Tenancy Branch