



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. The landlord was represented at the hearing by Legal Counsel, who did not testify but called 1 witness who gave affirmed testimony. The landlord's Legal Counsel was given the opportunity to question the tenant and the tenant was given the opportunity to question the landlord's witness. The parties were also given the opportunity to give submissions.

At the commencement of the hearing the tenant advised that he has not received any of the landlord's evidentiary material, and all evidence submitted to the Residential Tenancy Branch by the landlord was submitted the day before this hearing. The landlord's Legal Counsel advised that the evidence was sent to the tenant by email, which is disputed by the tenant. Legal Counsel for the landlord submitted that it would be prejudicial to the landlord to not consider any of the landlord's evidence and applied to adjourn the hearing, also disputed by the tenant.

The tenant filed the Application for Dispute Resolution on August 17, 2019 and was provided with a notice of hearing to serve on the landlord on August 28, 2019 within 3 days. There is no dispute that the tenant did so. In the circumstances, I found that it would be prejudicial to the tenant if the hearing was adjourned, given that the landlord has had well over 3 months to provide evidence. I declined to adjourn the hearing and advised the parties that none of the landlord's evidence will be considered in this Decision.

The landlord's Legal Counsel also submitted that some of the tenant's evidence was not provided within the time required under the Rules of Procedure. The tenant agreed that the late evidence not be considered, and I decline to consider the tenant's late evidence.

All other evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The tenant testified that this fixed term tenancy began on November 15, 2011 and expired on November 30, 2012 thereafter reverting to a month-to-month tenancy which ultimately ended on February 28, 2019. Rent in the amount of \$3,200.00 per month was originally payable under the tenancy agreement, which was raised from time-to-time up to \$3,525.00 payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord at the time collected a security deposit from the tenant in the amount of \$1,600.00, all of which has been returned to the tenant, and no pet damage deposit was collected. The rental unit is the upper 2 floors of a house, and a basement suite was also occupied by another tenant. The landlords did not reside on the rental property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that on December 24, 2018 the tenant received a Two Month Notice to End Tenancy for Landlord's Use of Property by registered mail. A copy has been provided for this hearing and it is dated December 19, 2018 and contains an effective date of vacancy of February 28, 2019. The reason for issuing it states: "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)."

The tenant did not dispute the Notice and testified that at the time of receiving it the tenant had a 3 month old baby and young daughter. To dispute, the tenant would have had to sign a new lease before the dispute could be heard, and the tenant didn't have the time to submit a dispute and find a suitable place to move into. The landlord's agent

orally asked the tenant if he wanted more time, and the tenant did want more time, but didn't receive any extra time to move out.

No one has occupied the rental unit; not the landlord and not any family member, or anyone. The tenant has provided witness letters from the neighbours on each side of the rental home. The first is dated July 23, 2019 and states that since the tenant's family moved out on February 28, 2019 the rental home has remained continuously unoccupied until the date of the letter. It also states that the writer observed workers from Fortis BC digging up the back lane to disconnect the gas line on or about June 15, 2019. In April, 2019 an arborist told the writer that the owners were applying to tear down the house, rebuild and construct a lane house on the property and the owners were filing an application for redevelopment and the project should start sometime in the summer of 2019. The second is dated August 15, 2019 and states that the rental home has remained unoccupied from February 28, 2019 to the date of the letter. It also states that the natural gas to the rental home was disconnected on June 15, 2019 and hydro was cut off shortly thereafter.

At the time that the notice to end the tenancy was received the rental property was listed for sale, and a copy of the listing has been provided as evidence for this hearing. However, the landlord's agent contacted the tenant by telephone on December 19, 2018 and said that the tenant would be served with a notice to end the tenancy for landlord's use of property. The tenant disputed that intention and emailed the landlord. After that the listing was removed. The tenant does not believe that the landlord had any intention to move in but clearly had the intention to sell the property.

Sometime in the summer of 2019 the rental home was demolished. The landlord started to apply for demolition in April, which was less than 2 months after the tenancy had ended. The tenant believes that the landlord did not act in good faith, intending to sell and then changed her mind and demolished the rental unit. The inspection for demolition is dated April 26, 2019 and a copy of the report has been provided as evidence for this hearing. The tenant submits that the evidence shows that the landlord had no intention of occupying the rental unit. The application to the City for demolition is dated June 10, 2019.

The law specifies that a tenant may be compensated the equivalent of 12 months rent if the landlord has not acted within a reasonable time to accomplish the reason stated in the Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant submits that a reasonable time should be within 15 days after the end of the tenancy, based on previous Decisions of the director, Residential Tenancy Branch that the tenant

has read. The landlord did not take reasonable steps to move onto the property or maintain that stated purpose for 6 months.

The landlord's witness testified that he is a good friend of the landlord and also the general contractor for building a new house on the rental property. The witness also acted for the landlord to maintain the property and met the tenant many times and communicated by text messaging when the tenant resided in the rental home.

Before the tenant moved out, the owner of the rental property told the witness that the landlord's mother who resided in China wanted to live with the landlord. The landlord's mother is elderly and needed care. The witness also testified that the property had been listed for sale in November, 2018 and the landlord told the witness that the market was slow so the listing was cancelled.

The witness believes that the insurance for the house was due for renewal sometime in March, 2019, and recommended a friend who works for an insurance company to the landlord. The insurance company would not renew the insurance because the wiring was not properly installed and out of style making it a risk. There were also problems with the plumbing, roof and some minor mechanical problems, which had to be fixed before it could be insured.

The witness asked an electrician and a plumber to check the home and they both said they could not fix it because wiring and plumbing pipes were inside the wall, covered by drywall and cupboards in the kitchen. The plaster would have to be removed. Due to the age of the house an asbestos test was first required as a matter of policy and building codes, and permits were required. The landlord decided that it would cost too much to repair and rebuilding would be similar in cost, so the landlord applied to re-build.

An architectural designer made applications to the City, and the witness was hired as a contractor. The work will likely be completed around October next year. Then the landlord will move into the new house on the rental property. The time it took to apply for permits and complete construction is reasonable in the opinion of the witness. The house was demolished in September or October, 2019, and the new foundation has been started. The new home is a customized building with a lot of details, which takes a longer time to complete.

The landlord's mother is currently in China, but the witness is not aware of when she was last in British Columbia, nor does the witness know if she was in the province any time after the end of February, 2019. The witness testified that the landlord wanted to move in, but couldn't insure the house.

Submissions of the Tenant:

The tenant submits that the landlord did not show any intent to accomplish the stated purpose for ending the tenancy in any reasonable time after the end of the tenancy. The intent was for the landlord's mother to move in but there is no evidence that she actually moved here and lives in China. The landlord's witness claims that the house was not insurable, but not until later in March, and there's no evidence that it's true; it's only hear-say.

The landlord also claims that circumstances prevented the landlord moving in, or having a close family member move in, but the tenant does not believe that any of the claims of the landlord justify extenuating circumstances. If there was any truth or good faith, the landlord would not have listed the property for sale.

Submissions of the Landlord's Legal Counsel:

The tenancy lasted about 6 years, and the tenant did not take the opportunity to extend the tenancy to the end of April, 2019. The rental house was not in good condition and the landlord encountered problems when trying to get insurance, being required to get inspections and repair electric wiring and plumbing. The owner was then faced with 2 options: complete major renovations, or build a new house. After consulting with the witness the landlord decided to re-build. Around June, 2019 the landlord applied for permits for demolition and re-building. Around September, 2019 construction started. The landlord's Legal Counsel submits that the time within which the landlord applied for permits was reasonable.

It was still the intention of the landlord to move in after construction was finished according to the witness. The tenant submitted that the testimony of the witness is hear-say, however such rules should be relaxed.

The landlord has taken all reasonable steps within a reasonable time as required by the *Residential Tenancy Act*. The *Act* also states that the director may excuse a landlord from paying compensation if the Arbitrator's finding is that extenuating circumstances prevented the landlord from moving in. The only reason the landlord has not moved in is because they wanted to rebuild before moving in, and the landlord acted in good faith when the notice to end the tenancy was served. There's no reason to suggest that the option chosen was not reasonable, and there was no delay in the process in getting required permits.

The landlord's Legal Counsel submits that the tenant has failed to establish any evidence to suggest that the owner will not move in after the new house is completed.

Analysis

Firstly, Section 49 (2) and (3) of the *Residential Tenancy Act* states that a landlord may end a tenancy by giving the tenant 2 months notice in the approved form if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49 (6) allows a landlord to end a tenancy by giving 4 months notice in the approved form if the landlord has all necessary permits and approvals required by law, and intends in good faith to demolish, renovate or repair the rental unit in a manner that requires it to be vacant.

In this case, the landlord gave 2 months notice to vacate, using the approved form, citing that the rental unit would be occupied by the landlord or a close family member. However, instead of moving into the rental unit the landlord had it demolished. The landlord's position is that the cost to renovate and make repairs would be similar to demolishing and building and those extenuating circumstances prevented the landlord from moving into the rental unit, and the delay is reasonable.

I find that the timing of certain events is very important to the merits of this dispute.

I have reviewed the evidentiary material of the tenant, and specifically the witness letters from neighbours on both sides of the rental complex which set out specific dates. In April, 2019 an arborist told the writer that the owners were applying to tear down the house, rebuild and construct a lane house on the property and the owners were filing an application for redevelopment and the project should start sometime in the summer of 2019. The natural gas to the rental home was disconnected on June 15, 2019 and hydro was cut off shortly thereafter.

The evidence also shows that the landlord listed the rental home for sale in November, 2018 and cancelled the listing on December 21, 2018. The landlord issued the Two Month Notice to End Tenancy for Landlord's Use of Property on December 19, 2018, which was 2 days before the listing was cancelled, effective February 28, 2019, stating that the landlord would be occupying the rental unit. The evidence shows that the landlord's mother, who currently resides in China, would be moving in with the landlord. Also, the landlord's witness is not certain but believed the home insurance was up for renewal in March, 2019, and the landlord's insurance company stipulated required problems be remedied. I see no evidence of that, and the witness' testimony about when renewal was required is a guess at best. The safety inspection was completed in April, 2019. The landlord applied for demolition and building permits on June 10, 2019 according to the evidence provided by the tenant.

I refer to Residential Tenancy Policy Guideline #2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, which states, in part:

If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice

the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement. Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

I am not satisfied that the landlord has established extenuating circumstances, given that the rental home was listed for sale, the tenant was served with a notice to end the tenancy prior to the listing being cancelled, and the landlord didn't apply for any permits or take any steps to accomplish the stated purpose other than to demolish the rental home sometime in April, almost 2 months after the effective date of the Notice.

With respect to compensation, Section 51 (2) states that, subject to subsection (3) the landlord must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement if steps have not been taken within a reasonable time after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or does not use the rental unit for that stated purpose for at least 6 months, beginning within a reasonable period after the effective date of the notice. Although the monetary jurisdiction under the *Act* is \$35,000.00, I find that since the penal sum under the *Act* amounts to more, I find that the penal sum is warranted.

I find that the landlord has not acted in good faith and the tenant has established a monetary claim as against the landlord for the equivalent of 12 months rent payable under the tenancy agreement, or \$42,300.00 ($\$3,525.00 \times 12 = \$42,300.00$).

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$42,400.00.

This order is final and binding and may be enforced.

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 20, 2019

Residential Tenancy Branch