



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on May 1, 2018 on a fixed term to end May 1, 2019 following which the tenancy was to continue on a month to month basis. Rent of \$1,700.00 was payable on the first day of each month. The rent was increased to \$1,743.00 effective May 1, 2019. Landlord QZ is the only Landlord named in the tenancy agreement. On May 5, 2019 the Landlord gave the Tenants a two month notice to end tenancy for landlord’s use (the “Notice”) with an effective move-out date of July 31, 2019. The reason stated on the Notice is that the Landlord or a close family member of the Landlord would occupy the unit. The Tenant

gave 10 days notice to move out of the unit and did so on June 1, 2019. The unit was never occupied by the Landlord and was sold by the Landlord.

The Tenant states that the unit was listed for sale about 6 months prior to the receipt of the Notice. The Tenant states that on November 20, 2018 the Landlord informed the Tenants that they wanted to sell the unit and the next day a sale sign was in place. The Tenant states that the Landlord informed the Tenants that they would be selling the unit with the tenancy in place. The Tenant states that the sale sign was still in place when the Tenants were given the Notice and that at this time Landlord XZ informed the Tenants that it was easier to sell the unit empty. The Tenant states that the listing for the unit indicates that it was sold on July 31, 2019. The Tenant states that they were also told by the building manager that the unit was sold, and the new owner was to move into the unit. The Tenants claim \$1,700.00 x 12 months.

The Landlord states that it cannot recall if the unit was for sale before the Notice was given to the Tenants. The Landlord also states that the unit had been listed from November 27, 2018 to the end of January 2019. The Landlord states that at the time the Tenants were given the Notice the unit was not for sale. The Landlord states that the owner, Landlord QZ, was out of country attending to its ill mother. The Landlord's Agent states that the mother had been ill for a few years. The Landlord states that Landlord QZ returned on May 25, 2019 and that on this date a letter was received indicating that the mother had become critically ill. The Landlord states that Landlord QZ returned to the other country for the period June 4 to 21, 2019 and again on June 30, 2019. The Landlord states that Landlord QZ has not returned since that date. The Landlord states that it is confused about the dates of the out of country trips made by Landlord QZ. The Landlord states that the unit was placed for sale as Landlord QZ was out of country and was concerned about the vacancy tax that would become payable if Landlord QZ did not occupy the unit for at least 6 months and it was unknown how long Landlord QZ would be out of count while its mom was ill. The Landlord states that on May 23, 2019 they tried to cancel the Notice as they did not know how long Landlord

QZ would be out of country. The Landlord states that the Tenants were not informed of the reasons the Landlord wanted to cancel the Notice as Landlord QZ did not inform the Landlord until July 2019 of the health problems with the mom. The Landlord states that the unit was sold with a closing date of August 12, 2019. The Landlord's agent states that that Landlord QZ was intending to move into the unit but had to return to the other country and that the unit was sold in July 2019. The Landlord states that it received the letter of the mom's illness from a person in the other country. The Landlord states that while the mom had other children present in that other country, it was the family's cultural practice that required Landlord QZ as the oldest child to care for the mom. The Landlord states that Landlord QZ's husband had gone to the other country in April 2019 to care for the mom and that their culture required a man to be the first person to arrive to care for the mom. The Landlord states that the husband has not returned since that date. The Landlord states that the unit was off and on the market and that Landlord QZ was back in Canada between May 24 and June 4, 2019. The Landlord states that they had proposed a mutual agreement to end the tenancy with the Tenants so that Landlord QZ could move into the unit and take the unit off the market.

The Tenant states that the mutual agreement to end the tenancy was only proposed after the Notice was given to the Tenants. The Tenant states that they met with the Landlord who had another person present and that this person said they were selling the unit, then stated that Landlord QZ would move into the unit and then said, "I don't know". The Tenant states that the Landlord was vague and that the Tenants did not know why the Landlord wanted to enter into a mutual agreement to end the tenancy. The Tenants state that the Landlord gave them two different addresses for Landlord contact and that they found that the one address was being rented and that the other address was vacant. The Tenants state that they feel they have been used, lied to and taken advantage of starting in November 2018 and that this was very stressful to the Tenants, one of whom was on maternity leave at the time. The Tenant states that the Landlord never said anything about a family illness or an illness out of country.

The Landlord states that the one address provided to the Tenants is the Landlord's address and the other address is owned by the Landlord's brother. The Landlord states that Landlord QZ does not live at either address but that in November 2018 Landlord QZ lived with the Landlord's brother and the Landlord. The Landlord states that after living with the Landlord, Landlord QZ rented their own place. The Landlord's agent states that Landlord QZ is currently renting a unit in West Vancouver. The Landlord states that this is not correct and that Landlord QZ stays with the Landlord when in the country. The Landlord states that Landlord QZ and the husband never lived in the rental unit after it was purchased around 2015.

The Tenant states that the unit was rented by persons known to the Tenants for 5 or 6 years before their tenancy started in 2018. The Landlord states that Landlord QZ lived in the same city as the rental unit 6 years ago and then moved in with the Landlord in 2014 or 2015. The Landlord's Agent states that the unit was on the market until Landlord QZ returned in May 2019 when Landlord QZ intended to move into the rental unit. The Agent states that Landlord QZ wanted to stay in the unit upon their return from out of country. The Landlord denies telling the Tenants that they wanted to sell the unit empty of tenants. The Landlord states that at some point after receipt of the Notice the Tenants wanted to cancel their 10-day notice and offered to stay in the unit as the place they found was no longer available to them.

The Tenant states that the Landlord has not provided any supporting evidence that Landlord QZ left for the other country after its return to Canada on June 21, 2019.

Analysis

Section 51(2) of the Act provides that 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.

It is undisputed that the stated purpose for the Notice was for the Landlord or a close family member of the Landlord to occupy the unit. It is also undisputed that the unit was sold prior to the effective date of the Notice, and that the Landlord did not occupy the unit. For these reasons I find that the Landlord did not take any steps to accomplish the purpose for ending the tenancy and that the rental unit was not used at all for the stated purpose of the Notice.

Section 51(3) of the Act provides that a landlord may be excused from paying the tenant the amount required under subsection (2) as set out above if extenuating circumstances prevented the landlord 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.

The Landlord gave inconsistent evidence on the length of time that the unit was for sale leading up to the Notice, including giving inconsistent evidence that the unit was for sale at the time of the Notice. I also consider that the Landlord's evidence overall was vague, confusing and somewhat evasive. The Landlord only provided one document as evidence of Landlord QZ's travel out of the country. In contrast the Tenant's evidence overall was clear, straightforward and compelling. For this reason, I prefer all of the Tenant's evidence including the Tenant's evidence that the Landlord informed the

Tenants that the reason for the Notice was that they wanted to sell the unit empty of tenants. As the Landlord's evidence is that the mother out of country was ill for a couple of years prior to the service of the Notice I consider that this illness likely did not affect the ongoing intentions of the Landlord to sell the unit and that the Notice was an attempt to speed the sale of the unit by having it empty. I find therefore that the Landlord has not provided sufficient evidence of extenuating circumstances that would excuse the Landlord from paying the 12-month penalty. As such I find the Tenants entitled to their claimed amount of **\$20,400.00**. As the Tenants have been successful, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$20,500.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$20,500.00**. If necessary, 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 Act.

Dated: January 15, 2020

Residential Tenancy Branch