



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order from the landlords.

The hearing was conducted via teleconference and was attended by both tenants and both named landlords.

Both parties acknowledged receipt of each other's evidence. However, the landlord submitted, and the tenants confirmed, that they received the tenants' evidence on December 31, 2019. The landlord confirmed that they had had an opportunity to review the tenants' evidence and they were prepared to respond to the tenants' claim.

Residential Tenancy Branch Rule of Procedure 3.14 requires that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

While the parties agree that the tenants did not serve the landlord with their evidence in compliance with this rule (ie. The evidence was served less than 7 days before the hearing), I am satisfied the landlord was prepared to present their case and had had sufficient time to review the tenants' evidence.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for the landlords not using the rental unit for the stated purpose on a notice to end tenancy for landlord's use of the property and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 51, 67, and 72 of the *Act*.

Background and Evidence

The tenants submitted a copy of a tenancy agreement signed by the parties on August 26, 2016 for a month to month tenancy beginning on August 29, 2016 for a monthly rent of \$1,200.00 due on the first of each month with a security deposit of \$600.00 paid.

The tenants submitted into evidence a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 23, 2019 with an effective vacancy date of March 31, 2019 citing the rental unit would be occupied by the landlord or the landlord's close family member. The parties agreed the tenants vacated the rental unit to move into a new rental unit nearby by March 1, 2019.

The landlord submitted a copy of a tenancy agreement between himself and his mother, the owner of the rental unit for a tenancy beginning effective March 1, 2019. He testified that since then he has been using the rental unit as a place to hang out with friends; to have some alone time; and to allow friends and family to stay.

The tenants submitted that they didn't have any idea how the landlord was using the property until one of them met a person in front of the residential property one day in August who indicated that he was not a family member but that he was staying in the rental unit.

The tenants testified that they later went to the unit itself and knocked on the door where a person of Hispanic heritage answered the door and stated that he had been living there for a month.

The tenants submitted video records of both of these encounters, however, neither video showed the person or persons to whom they were speaking. In addition, despite speaking with the persons in the video's neither video records anyone saying that the new occupants are tenants. In the second video, the occupant indicates that he had been there "this month".

The landlord submitted that the person the tenants had met in the unit was a friend of his who he had had staying with him for a while. He testified that his friend was an international student and had need a place to stay.

The tenants also submit that when they served the landlord with their evidence, they went to the main part of the property to serve the owner of the property with the evidence and the landlord came down the stairs. The tenants took this to mean the landlord was living in the main part of the house.

Analysis

Section 49 of the *Act* allows a landlord to end a periodic tenancy by issuing a Two Month Notice to End Tenancy for Landlord's Use of Property, if the landlord intends, in good faith, to occupy the rental unit.

Section 51(1) of the *Act* stipulates that if a landlord issues such a notice the tenant who receives it is entitled to compensation in the amount equivalent to one month's rent payable under the tenancy agreement. The parties did not raise this as any issue during the hearing.

Section 51(2) states that subject to subsection (3) the landlord must pay the tenant, in addition to the one-month compensation noted under Section 51(1) an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if:

- 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
- The rental unit is not used for that stated purpose for at least 6 month's duration, beginning within a reasonable period after the effective date of the notice.

Section 51(3) does allow the director to excuse a landlord, from paying the tenant this additional compensation, if in the director's opinion, extenuating circumstances prevented the landlord from either accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline 50 provides guidance on circumstances that will constitute accomplishing the stated purpose when a landlord provides a notice to end the tenancy for the landlord to occupy the rental unit as follows:

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy.

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Guideline 50 also provides guidance on the issue of extenuating circumstances as follows:

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. 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.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the tenants have failed to provide sufficient evidence to establish, on a balance of probabilities, that the landlord is not using the rental unit for the stated purpose.

I make this finding, in part, because the tenants, while, they have provided video evidence of someone staying in the rental unit, I find that there is insufficient evidence to establish that the person staying in the unit was rent it from the landlord as a rental unit. I find the video evidence only confirms that the one person had been staying in the unit during the month it was filmed.

Furthermore, I find the landlord's submissions to be compelling in how the property is being used by him and his friends. I find the submissions of both parties to be equally credible and as such, in the absence of any evidence to confirm that new tenants had moved into the rental unit as part of a tenancy I find the tenants have not met the burden of proof to establish the landlord is not occupying the rental unit as noted in the Notice to End Tenancy issued on January 23, 2019.

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety 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: January 07, 2020

Residential Tenancy Branch