



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 Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenants have claimed compensation equivalent to 12 months rent plus additional compensation for moving and other related expenses for the Landlord’s breach of a notice to end tenancy for landlord’s use. As the Act provides a set amount for this claimed breach as noted below, I find that the Tenants may not claim more for the breach. I therefore dismiss the compensation amounts claimed over the equivalent to the 12 months rent.

Issue(s) to be Decided

Did the Landlord use the rental unit as stated in the notice to end tenancy for landlord’s use?

Are the Tenants entitled to the compensation claimed?

Background and Evidence

The following are agreed facts: The tenancy of an upper unit in a house started under written agreement on May 1, 2015. In 2016 the Landlord purchased the unit from the original landlord, the parent of the new Landlord. On February 24, 2019 the Landlord served the Tenants with a two month notice to end tenancy for landlord's use (the "Notice"). The reason stated on the Notice is that the Landlord or a close family member of the Landlord is to occupy the unit. The effective date of the Notice was May 1, 2019 however the Tenants were granted an extension and moved out May 15, 2019. As of August 1, 2018, and to the end of the tenancy rent of \$1,831.10 was payable on the first day of each month. The Landlord's mother-in-law ("SG") was to occupy the unit.

The Tenant states that when the Notice was first served the Landlord informed them that they had an urgent family matter and needed the unit as soon as possible. The Tenant states they had a difficult time finding other accommodation and on about April 27, 2019 they asked for an extension to move out. The Tenants state that the Landlord informed them that SG was on its way and that the Landlord could only extend the Tenants move-out to May 15, 2019. The Tenant states that SG did not move into the unit within a reasonable time. The Tenant argues that a reasonable delay for SG to occupy the unit would not be more than 15 days. The Tenant states that up to July 31, 2019 the tenants of the lower unit, who were also evicted for the Landlord's use, did not see or hear anyone living in the residence. The Tenant states that these tenants saw only a few furniture items and lumber delivered to the upper unit on May 16 or 17, 2019. The Tenant provides a witness letter from these tenants. The Tenant states that it also returned to the unit in mid August 2019 and never saw anyone residing in the unit.

The Landlord states that most of SG's furniture was moved into the unit on May 16, 2019 and that SG then moved in to reside in the unit on July 11, 2019. The Landlord provides two neighbour's witness letters of SG having moved into the unit on July 11, 2019. The Landlord states that in May 2019 SG was in another country for the closing

of a sale of SG's property in that country. The Landlord states that SG had expected the sale to be completed in May 2019 but that this sale was delayed to July 5, 2019. The Landlord states that this delayed the occupation of the unit as SG had to attend in person to finalize the sale in the other country. The Landlord provides a copy of a letter from a real estate company indicating that SG had the property for sale since 2018, that a deposit for the purchase was provided on March 8, 2019 with the sale to be completed on May 31, 2019, that the completion date was delayed to July 5, 2019 due to purchaser financing issues, and that SG's presence leading to the completion of sale of the unit was essential. The Landlord states that SG returned to Canada on July 10, 2019. The Landlord states that more furniture was brought to the unit after this date. The Landlord states that SG has been a permanent resident in Canada since 2013. The Landlord argues that the delay of the sale are extenuating circumstances that prevented SG from occupying the unit sooner than July 11, 2019.

The Tenant sought an opportunity to question one of the neighbours in relation to its witness letter. The Tenant argues that the neighbour's witness letters are identical, do not provide sufficient detail of the move-in, and do not speak to SG's occupation of the unit. Further the Tenants state that during their tenancy they never saw that neighbour outside and that its unlikely that the neighbour was outside in order to actually see the move-in of SG. The Landlord did not have that witness available for the hearing although this had previously been discussed between the Landlord and its legal counsel. During the hearing the Landlord attempted to call in this witness but was unable to contact this witness before the hearing ended. Neither Party requested an adjournment at the end of the hearing for this Witness to be called.

The Tenant states that the Landlord originally had plans to construct a revenue producing carriage house on the property. The Tenant believes that nobody moved into the unit that was empty for the purpose of renovations and not for SG's ability to reside in the unit.

The Landlord states that while it was originally intended to construct a carriage house on the property starting June 2019 the city bylaws did not allow this, so the Landlord changed its mind and renovations were done only to make an addition to the house for rental revenue. The Landlord provides a copy of a permit for the addition dated July 30, 2019. The Landlord states that in preparing for these renovations they also determined that the deck enclosure had been built without permits and required removal. The Landlord states that construction started in September 7, 2019 with the final permits issued on September 20, 2019. The Landlord provides a letter in relation to the addition, enclosure and permits obtained.

The Landlord states that SG had to return to India on several occasions after July 11, 2019 to attend medical appointments and to deal with a pension application and taxes. The Landlord states that SG was required to be in attendance in person for the pension and tax matters. The Landlord states that SG was required to seek medical help in India as there were serious health matters that required quicker response than could be provided locally. The Landlord provides documents in relation to the sale and pension/tax matters and copies of SG's flight itineraries. The Landlord provides a letter from a nurse practitioner in BC setting out SG's medical issues and need for specialized medical help. The Landlord provides medical notes from physicians out of country indicating that SG was seen and provided prescriptions. The Landlord argues that these were extenuating circumstances that caused SG to intermittently be away from its residence at the unit after moving in and residing at the residence from July 11, 2019 onward.

Analysis

Section 51(2) of the Act provides that subject to subsection (3), the landlord must pay the tenant 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.

Section 51(3) of the Act provides that the director may excuse the landlord 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

The Tenant's supported evidence of the lack of occupancy of the unit only extends to July 31, 2019. Given the Landlord's supported evidence of occupancy after that date I find on a balance of probabilities that SG did occupy the unit for at least 6 months from July 31, 2019.

While the mere evidence of having moved items into a unit may not establish actual residency, the Landlord provided supporting and independent evidence of SG personally moving into the unit on July 11, 2019. I also consider that despite the lack of defining terminology, the neighbours' letters do infer residency and therefore support a finding of occupancy by SG from that point forward. Although the Tenants question the reliability of one of the neighbours' letters on the basis of their past experience with that neighbour not being seen outside to observe activities at the unit, I consider that evidence of past behavior by a neighbour is not indicative of the future behavior of those neighbours with new neighbours. I also consider the Tenants' supporting evidence of no occupation during July 2019 from the lower tenants to be of less weight than the Landlord's supporting evidence of SG's move into the unit during July 2019 from neighbours as neither neighbour would have any interest in the outcome of this decision as might the lower tenants who were also evicted for the Landlord's use. For these

reasons I find on a balance of probabilities that the Tenants have not substantiated that SG did not occupy the unit from July 11, 2019.

Given the undisputed evidence of the Landlord's urgency to have SG move into the unit, I accept that a reasonable time for SG to have moved into the unit would have been 15 days after the tenancy ended or the end of May 2019. However, given the undisputed evidence of the sale of SG's property, the requirement for SG to attend out of country for that sale and the flight itineraries for SG, I find on a balance of probabilities that SG was subsequently and reasonably stopped from occupation of the unit until July 11, 2019. Even if the occupation by this date was unreasonably delayed, I would also consider the evidence of SG's travel requirements to be evidence of extenuating circumstances that prevented occupation of the unit before July 11, 2019.

For these reasons I find on a balance of probabilities that the Tenants have not substantiated that SG did not accomplish the purpose within a reasonable period after May 15, 2019 or that there were no extenuating circumstances that prevented the occupation of the unit. I therefore find that the Tenants are not entitled to the compensation claimed and I dismiss that claim. As the Tenants have not been successful with its claim, I dismiss the Tenants' claim to recover the filing fee and in effect the Tenants' application is dismissed in its entirety.

Conclusion

The application is dismissed.

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: March 18, 2020

Residential Tenancy Branch