# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDCT, FFT

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

Issue(s) to be Decided

Was the rental unit used for the purpose stated in the notice to end tenancy for landlord's use?

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to the filing fee?

Relevant Background and Evidence

The following are agreed facts: The tenancy of the lower unit in a house (the "Unit"), also containing an upper rental unit (the "Upper Unit"), started under written agreement on January 1, 2019 and ended September 30, 2019. Rent of $1,200.00 was payable on the first day of each month. The tenancy ended following the Landlord giving the Tenants a two month notice to end tenancy for landlord's use (the "Notice") with an effective move-out date of September 30, 2019. The Notice sets out that the Landlord or a close family member of the Landlord will occupy the Unit.

The Tenants state the following:
On July 31, 2019 the Landlords sent the Tenants an email, attaching a copy of the Notice, setting out that due to financial difficulties associated with their son's loss of income the Landlord's son would be occupying the less expensive Unit and that the Upper Unit would be rented out to vacation renters. The Tenants provide copies of the email. The Landlord advertised the Unit online for short term tenancies with rents from $70.00 per night to $1,600.00 per month. The Tenants provide copies of advertisements dated as early as December 2019. The Tenants argue that the Landlord did not use the Unit as stated in the Notice and claim compensation equivalent to 12 months' rent.

The Landlords state the following:
The Landlord owns the rental property containing the Unit and the Upper Unit along with its own separate residence. The Landlord also owns a 3rd property (the "3rd Property") equally with its son. The son had experienced major medical issues and was without income since the spring of 2018. The son lived in the 3rd Property until March 1, 2019 when it was rented to other tenants. The son moved into the Upper Unit in June or July 2019. The tenancy of the 3rd Property ended on October 31, 2019 following which renovations were undertaken. These renovations were completed sometime in the early months of 2020. The son remained in the Upper Unit doing renovations to the upper bathroom that were completed in January 2020. During this time the son used the bathroom of the Unit. The son shared custody of the grandson who chose to use the Unit's only bedroom while residing with the son during this time as well. As the Unit only had one bedroom it was not suitable for use by both the son and the grandson.

Prior to serving the Notice the Landlords and their son planned to rent the Upper Unit and the Unit as furnished short term vacation rentals together with the 3rd property as a short-term vacation rental. This was necessary to generate sufficient income for the son and to pay the mortgages on all the properties. The son would live in whichever of the

residences were not rented out of the three. The son could not pay the rent for the Upper Unit due to not having income so the Landlord decided the son would live in the Unit and the Upper Unit would be rented. It was a fluid and complex situation because the Landlord ultimately wanted the son to live in the 3rd property. The plan was to advertise both the Upper Unit and the Unit for short term accommodation and whichever of the two rented first, then the son would live in the other . The Landlord does not know when the Upper Unit was advertised for rent however a new tenancy for the upper unit started on March 1, 2020. The Landlord gave no evidence either orally or in its written submissions as to where the son commenced its residence after the rental of the Upper Unit.

The Landlord makes the following written submissions:

- given the state of construction and repairs to the Upper Unit it was decided that it was best if the Unit tenancy was ended;
- between March 2019 and March 1, 2020 no renters were sought for the Upper unit;
- between October 2019 and March 1, 2020 no renters were sought for the Unit;
- the two-month notice was served for the son to "take over the use" of the Unit, the son was already in residence in the Upper Unit;
- it is nine months since the son occupied the Upper unit;
- the strategy is for the son to reside in either the Unit or the Upper Unit depending on which unit is rented for short term stays.

The Landlord argues that the son occupied the Unit by having use and possession of the Unit and that the Act does not exist "to oversee the legitimate let rental market. Former tenants also have no right to interfere with the legitimate activities of property owners renting their accommodations for short term stays."

Analysis

Section 49 of the Act limits the reasons for ending a tenancy for landlord's use to circumstances where

- a landlord will occupy the unit;
- the landlord will demolish the unit, make renovations to the unit , or to convert the unit; or
- the unit has been sold and the purchaser intends to occupy the unit.

I note that there is no ability under the Act for a landlord to end a tenancy for landlord's use where the Landlord intends to occupy the unit for the purposes of re-renting the unit. Further the definition of "occupy" under section 49 of the Act is reviewed by the BC Supreme Court and sets out as follows in *Shuld v Niu 2019 BCSC 949 (*the "BC Supreme Court Decision"*)*:

> In my view, the word "occupy" as used in s. 49(3) must be read in the context of the statute and, bearing in mind statutory objectives, it is clear to me that the specific purpose of these sections is to limit the circumstances in which a landlord may give a Notice to End Tenancy (see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21, 154 D.L.R. (4th) 193, cited by *British Columbia v. Philip Morris International, Inc.*, 2018 SCC 36). There are two separate circumstances. One scenario is where the landlord intends <u>to occupy the rental unit as a residence for his own purposes</u>; the other scenario is where the landlord intends to demolish the rental unit to construct something different.

It appears that the Landlord argues that it can do whatever it wants with a rental unit after it takes use and possession of the unit and that actual residence in the unit is not necessary to meet the definition of "occupy". However, given the limited circumstances for ending a tenancy for landlord's use under the Act and the above cited BC Supreme Court Decision I find that the Landlord's argument fails.

Section 51(2) of the Act provides that Subject to subsection (3), the landlord 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.

The Landlord does not dispute the contents of the July 31, 2019 email setting out the reasons for the issuance of the Notice: that their son would occupy the rental unit while the upper suite would be rented out to vacation renters. The Landlord's evidence is that the son resided in the Upper Unit and used the Unit only for the bathroom and to give the grandchild the choice of sleeping in the one bedroom in the Unit. The Landlord's evidence is that the Upper Unit was rented for March 1, 2020. The Landlord gives no evidence of where the son resided after March 1, 2020 and I consider the Landlord's evidence that the Unit was not suitable for the son's residence as it only had one bedroom. There is no evidence that as of March 1, 2020 the son used the Unit for its residence. Nonetheless given the undisputed evidence that after the end of the tenancy the son used the Unit for what can be considered residential purposes, I find on a balance of probabilities that the Unit was used for the purpose stated on the Notice until December 2019.

While the Landlord did not deny the Tenant's advertising evidence of the Unit in December 2019, the Landlord gives inconsistent evidence in its submissions of not having advertised the Unit. The Landlord gave oral evidence that the Upper Unit was rented on March 1, 2020 but cannot recall when the Upper Unit was advertised while having made submissions that no renters for the Upper Unit were sought leading up to March 1, 2020. The Landlord's oral evidence at the hearing was difficult to follow with the Landlord repeatedly being asked to clarify its oral evidence that was at times both inconsistent and confusing. This inconsistency and lack of clarity leads me to conclude that overall the Landlord's evidence is not reliable. I note that the Landlord did not call the son as a Witness at the hearing and did not provide any statement from the son as

a submission for the hearing. This leads me to consider that the son's evidence would not have been helpful to the Landlord.

While the Landlord appears to argues in its submissions that the advertisements were for future short term rentals, as the advertisements do not indicate that the rental of the Unit is restricted to a future date and as the Landlord provided no supporting evidence that the advertisement of the Unit was restricted to a future date, I consider that the advertisements must be taken on their face value as being available for rent at the time the advertisements were made in December 2019. I find therefore on a balance of probabilities that the Unit was advertised for short term or vacation rentals in December 2019 and that at this point the reason for the occupation of the Unit changed and became contrary to the purpose stated in the Notice and that at least as of December 2019 he Landlord occupied the Unit solely to rent it out again on the short term vacation market. I find therefore that the Landlord has not substantiated that the son occupied the Unit for residency purposes for at least 6 months.

Section 51(3) of the Act provides that the director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice 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.

As the Landlord appears to argue that the son did occupy the Unit as required under the Act, I consider that there are no extenuating circumstances that stopped the son from occupying the Unit. If the Landlord is arguing that the son could not occupy the unit for residential purposes due to extenuating circumstances the only evidence is that the son's medical condition created a financial need to have a plan to rent out one or two out of the three rental properties. As the evidence is that the son's medical condition

and financial considerations as a result of that condition were in existence in advance of the Landlord ending the tenancy, I find that this is not evidence of any extenuating circumstances that prevented the son from occupying the Unit for residential purposes after the end of the tenancy.

For the above reasons and given the undisputed evidence of monthly rent of $1,200.00 during the tenancy, I find that the Tenants have substantiated its claimed compensation of **$14,400.00**. As the Tenants have been successful with its compensation claim I find that the Tenants are also entitled to recovery of the **$100.00** filing fee for a total entitlement of **$14,500.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **$14,500.00**. 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: April 22, 2020

Residential Tenancy Branch