Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of $19,968.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the $100.00 cost of their Application filing fee.

The Tenants, J.M. and S.C., the Landlord, J.M., her husband, A.B., and the Landlord's legal counsel, A.F. ("Counsel") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Two witnesses, B.L. and I.M., for the Landlord were also present and provided affirmed testimony.

During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Parties agreed that B.L. was erroneously named as a Party to this matter; rather, he is a former property manager of the rental unit, whose contract ended prior to the Application being filed. Given this undisputed evidence, I find that B.L. is not a Landlord in this matter; therefore, I will amend the Application pursuant to section 64(3)(c) and Rule 4.2, removing him as a respondent.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on October 1, 2016, running to September 30, 2017, then operating on a month-to-month basis. They agreed that the Tenants paid the Landlord a monthly rent of $1,664.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $770.00, and no pet damage deposit.

The Parties agreed that the tenancy ended when the Tenants moved out of the rental unit in early April 2019. The vacancy followed the Landlord having served the Tenants with a Two Month Notice to End the Tenancy for Landlord's Use dated January 25, 2019 ("Two Months Notice"). The Two Months Notice was served on the Tenants on the ground that: "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 Tenants' claim is that the Landlord did not use the rental unit for the intended purpose set out on the Two Month Notice; therefore, the Tenants claim that the Landlord owes them "an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement", pursuant to section 51(2) of the Act

The Tenants said that they do not believe that the Landlord or a member of the Landlord's close family has moved into the rental unit. The Tenants said:

> After we moved out, we went to the owner's house multiple times to see if the mail was there. They weren't there. We have two weeks of video footage of them not residing in the property. That's the whole core of the video evidence. The house would be in the same state for multiple days over a week. It would show

no activity over weeks.

Counsel said that Landlord's family lived in the residential property for 27 years, until 2013. At that point, the family members took steps in their lives, with the Landlord's son pursuing his undergraduate degree in Ontario, the Landlord, J.M., working as a locum in other parts of British Columbia and Ontario, and her husband working as a professor in Ontario, near their son. As a result, the Landlords decided to rent out their home in 2013. They rented it out to other tenants first, followed by the Applicants in this matter, who moved in on October 1, 2016.

The Landlord submitted evidence to counter the Tenants' claim that they do not occupy the residential property. The Landlord submitted copies of electricity bills for the residential property, which is in the Landlord's name. The first bill is dated May 24, 2019, and shows electricity usage for April 1, 2019 to May 22, 2019. This submission also includes electricity bills for July, September, and November 2019, all in the Landlord's name, with consumption patterns showing electricity usage for the residential property over this time.

The Landlord also submitted an email from an internet company to the Landlord's husband, A.B., dated March 25, 2019. The email confirms the Landlord's installation date for new high speed internet service, which was scheduled for April 2, 2019. The email ends by saying: "Once the modem on our service is working, we encourage you to contact your previous provider to make sure they are no longer billing you." The Landlord included copies of the internet invoices for March, May, June, July, August, September, and October 2019, all in A.B.'s name with the residential property address.

The Landlord submitted a copy of a moving company invoice for a move from Vancouver to the residential property. The invoice is difficult to read; however, the Landlord also submitted a copy of an e-transfer payment from her to the moving company dated April 9, 2019.

The Landlord submitted an invoice for a gardening company that shows the Landlord had gardening work done from April 4 through to May 9, 2019, in the amount of $1,070.00.

Counsel said: "The Landlord is not renting out the property. There have been no advertisements placed online. Tab K of their submissions shows photographs of all of their belongings, these are not just a few - it is fully furnished with quite a bit of

belongings - taken throughout the house. The purpose [of evicting the Tenants] was to occupy the property themselves."

Counsel said that the Tenants are confused by the word "occupy". She said the Landlord can have other properties; and 'occupy' is not defined under the Act. She said that the Landlord does reside there.

> Right now, they are calling from two different locations. A.B. is calling from home, while J.M. is a doctor and is helping during the pandemic in another town. She is donating her time, but is in this hearing when she is volunteering her time to help with the pandemic. She resides there and works periodically. But both reside in [the residential property town]. It is not a vacation property. It is used all year round by the Landlord's family, who attend there at all times. Their son will also speak to this fact.

The Tenants' son was called into the hearing and provided affirmed testimony. Counsel asked him if his parents occupy the residential property. He said:

> Yes, [A.B.'s] there right now. They moved in last year and have been there a lot since then. I go there every couple of months. Every time I've been there, at least one of them was there as well. I went with my girlfriend and without her. Her family went there once. Some of my stuff is in storage there. I keep stuff there as well. I grew up there, went to high school, I use the boats they have there. I lived there until I started undergrad. [A.B.] is retired, but [J.M.] works as a family doctor locum. It's been their life since we moved out in 2013.

The Tenants had some questions for the Landlord's son. They asked if when his girlfriend's family visited, the Landlord was there, too. The son said: "No, they were there on their own." The Tenants asked for how long? "I think it was a weekend."

The Tenants asked where the son's father stays when not at the residential property. He answered: "No where. He stays more than not [there]. We have a residence in [another town, as well]; however, [the father] stays at the residential property, mainly."

The former property manager, B.L., also testified at the hearing. He said that the Landlords have a long, historic relationship with the Island. "Their son went to [Ontario] for university, [A.B.] went there, too, but at some point, he would graduate and return, and [A.B.] was nearing retirement. "What I said [to the Tenants] was that in all likelihood, they would move back. It was clear to the Tenants that this was a distinct

possibility."

Counsel asked B.L. if the Landlords occupy the property now. He answered as follows:

> It is not for rent; I've never seen any other tenants there. They take their boat out every summer. I run by their property. There's no sign that they have attempted to rent it. I have been in the premises– the bed is unmade. There was a big wedding on the Island this year; many people were at the house. They are occupying it. I saw the moving truck with a lot of stuff. They have wood in the garage.
>
> I do think they're living there. They have had good fortune in life. [A.B.'s] mother lives in London, England where they visit; they travel a lot. It's not unusual in terms of this Island.

The Tenant asked if two weekend's a month is living in the house? B.L. said "It could be, and in their case it is. If you're off the Island sailing or visiting your son in Vancouver, it doesn't mean you don't live on the Island in this house."

Counsel said that the Landlords own a large boat, which is kept nearby for the last 15 years. At their tab M, the Landlord submitted a photograph of a boat on a trailer being pulled by a semi-truck. Counsel said that the Landlords are avid boaters. They also travel a lot, given that they're retired and semi-retired.

The Landlord's mother lives in Victoria, [T.B.] is retired now. They sold their house in Ontario. Receipts from the town near the residential property at tabs N and O show them on the Island purchasing things, attending local restaurants, credit card statements.... This shows they spent significant time there. At tab P are photographs of personal mail

The Landlord also submitted a copy of an email dated April 9, 2019 that she received from a local friend welcoming her back and advising her about the local bagpipe band practices; the Landlord plays a bagpipe and practises with others in the community.

Counsel said that the Tenants' have limited evidence to substantiate their claim.

> They have 10 short videos of May 15 – 27, 2019, and an 11th video clip from June 4, 2019. We're now at the end of March, a year since the end of the tenancy. The short video clips from a 2-week period do not rise to the burden of

> proof. Some of the video evidence is short: the May 18 video clip is nine seconds long; May 19 is six seconds. There are pictures of the property with not a little bit of furniture. He fails to notice that the grass was cut that day by [a gardening company].

The Tenant mentions “no change, no change at all” in the videos, as he notes slippers in the same place, a dish left in a dish rack. He states that the furniture has been scattered around from a basement storage room. Counsel said: “That’s not the case. They weren’t scattering existing furniture about. The Tenant was there on May 27 at 4:30 p.m., which was two hours before [A.B.] arrived. See the ferry receipt dated May 27 at 5:56 p.m. ferry. He arrived on the Island at 6:45 p.m.”

Counsel noted a gap in the Tenants’ evidence between May 27 and June 4, 2019. She said:

> The Landlords were there that day, but this wouldn’t have made good evidence for their case, so we note that he was there on May 27. It is our position that the video evidence is insufficient. In terms of other evidence, they provided nothing else. The Landlord was aware from the Tenants’ late and unpaid rent that the Tenants were having financial trouble recently. [J.M.] was not working full time, since a car accident in December 2016.
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> There were money problems. The amount being claimed is a large amount. Maybe they thought they could make a little money. Unfortunately, the Landlords in good faith ended the tenancy, because they wanted use of the property. They are occupying the property. No sufficient evidence to prove otherwise.

In the June 4 video, the Tenant goes to the front door at first, as usual and no one answers. He hesitates there several seconds – more than in the other videos - not saying anything and does not mention the slippers being in the same place, as usual. When he goes to the side of the house to look in, he says: “Inside activity; something’s changed.”

Counsel said that the Landlord is compassionate toward the Tenants, given their financial trouble. She didn’t go after them for outstanding rent owing. They also delayed their move back to accommodate the Tenants. The Landlords waited until the Tenants had found a place. The Tenants failed to pay $1,150.00 of February rent, but the Landlord did not make an issue of that. The Tenants have made an exorbitant claim of nearly $20,000.00.

Counsel said that the Tenants have called into question the Landlord's good faith of issuing the Two Month Notice. She cited *Gichuru v. Palmar Properties Inc.,* 2011 BCSC 827 at tab U as, "the case authority for the RTB re evaluating good faith. [B.L.] spoke to the fact that the Landlord honestly moved back into the residence."

I asked the Parties for their concluding remarks. Counsel said:

> It is respectfully submitted that we've established that they've occupied the property pursuant to the Act. There are no advertisements to rent the property, nothing to prevent the Landlords from living there. They have submitted evidence of:
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> - utilities in their name,
> - belongings throughout the house,
> - boats,
> - they take part in activities on the Island, and
> - their son also uses the property.
>
> They didn't displace the tenants in bad faith. We respectfully ask that this Application be dismissed in its entirety.

The Tenants said:

> We have been talking about how many times they actually use the house, and that hydro records shows when they're actually there. On average, it's two weekends a month. In our original agreement, an amendment states that the Landlords have 30 days when they are allowed to use the place. The 30 days in a year is almost equivalent to how much they use it now. The hydro is in their name; we let them use our hydro and internet, so obviously they'd get their own now.
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> The moving receipt is unintelligible.
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> The yard was in a terrible state. It's one acre – we were both working, and we have a young child. It would take one full day to do it in peak season, and they can hire someone – that doesn't prove they're there.
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> They had one room downstairs full of furniture. They sold their place in [Ontario] and moved their furniture to storage or to their multiple properties. We never

claimed that they are re-renting the house. But just that they're not living there. It's not used as their residence. They don't hang their hats there.

Their hydro receipts correlate with hydro consumption. [J.M.'s] taking time out in [another city] during Covid-19. This hearing was scheduled long before Covid happened.

Two months after we moved out. Those are just some videos we took. We tried to keep it respectful. We knew they would come into town now and then; they did that when we lived there. This is a vacation home – going to the Island for a family day weekend.

Another point – the lawyer said how exorbitant it is, but this money was claimed on a year's rent. We're not trying to make money off of people, but this has caused us hardship, because we had to move a couple times. We found a place temporarily, but they intend on selling, so there is more cost to come. We pay almost double.

This is not taking an opportunity to make money; we have a young 5-year-old daughter to stay in school on the Island near her great grandparents. We've taken on hardships. The amount merely has to do with how much our rent cost.

I don't appreciate the allegation that we're doing anything in bad faith. Were not bad people. And quite simply, I understand why this law is in place. The hardships endured, the rent, finding another place, two moves, it almost adds up to that. It's understandable why this law is in place. We had difficulties after the car accident; it hasn't made it any easier on us.

Counsel responded regarding the electricity bills:

Most don't include a breakdown of days. It totals around $300.00, which is large. They own a house and live here everyday – if it's just a vacation property, they would turn off the heat and not be consuming a $300.00 hydro bill. They should have a lower hydro bill if not living there. Some hydro bills, some days are larger than others. It does not establish that someone lives there or not.

Also, the Tenants noted that they don't understand the Landlords to have rented out the place. That being said, the Tenants seem to misunderstand this legislation. It doesn't require that landlords live there day after day, but just have

> to occupy the property, which is not defined under the Act. The regular definition from Oxford is 'to reside in'. They do reside there, and they don't use it as a vacation home.
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> [B.L.] said the Landlords are older and retired and semi-retired – it's different than the Tenants' lifestyle with a child.

Counsel cited RTB Policy Guideline #2 (which has been supplanted by #2A) and which states that section 49 allows a landlord to end a tenancy for "landlord's use of property". It goes on that the Act allows a landlord to end a tenancy under section 49, if the landlord: "intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit." Counsel said that a landlord must establish that they followed through with the intention. She said: "They did follow through with intention. It's unfortunate that the Tenants have to pay more for rent, but the legislation doesn't prevent landlords from moving into their property. It's dangerous to make these claims – it discourages people from renting out their property. The Landlords did, in fact, move into their property and followed through on the purpose of the Two Month Notice."

The Tenant said:

> A $300.00 hydro bill is half the price of what we paid while living there. That's low for the property. Also, in our tenancy agreement, they had use of the property, so whether or not they're residing there, they had use of it while we were living there. They used it about the same amount of time they use it now - it correlates to about 30 days in the year. It's not like they went from never being there to having the vacation home back.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 51 of the Act sets out compensation entitlements for tenants who have been evicted under section 49 of the Act, depending on the circumstances. Section 51(2) states:

> 51 (2) 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.

Policy Guideline 50, “Compensation for Ending a Tenancy,” provides guidance on interpreting section 51:

> 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 renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.
>
> [emphasis added]

The effective vacancy date on the Two Month Notice was March 31, 2019, and I find that within six months, by September 30, 2019, the stated purpose for the Two Month Notice had been accomplished.

The Tenants’ video evidence shows that the Landlords may not have been staying at the property during the two-week duration of the Tenant’s visits. However, there was no evidence that anyone else was using the residential property during this time, either.

Further, the Act does not require a landlord to be in residence at all times. Rather, people travel, people attend events elsewhere. J.M. volunteers at a hospital in another community during the state of emergency, which I find is not an indication that the residential property is not her primary residence.

I find that the combination of evidence provided by the Landlord supports the finding that the family is using the residential property for their own purposes, and that it is not merely a vacation property. Also, there is no evidence before me that the Landlord ended the tenancy, so that they could re-rent it at a higher rate to someone else.

I find that the Tenants did not provide sufficient evidence that the Landlord failed to fulfill the purpose of the Two Month Notice within a reasonable period after the effective date of the notice, pursuant to section 51 of the Act. I find on a balance of probabilities that the Landlord used the rental unit for the stated purpose within six months after the effective date of the Two Month Notice. Based on all the evidence before me, overall, I find that the Landlord had an honest intention to move back to the residential property with no ulterior motive, when the Tenants were served with the Two Month Notice.

I find that some of the Tenants' statements indicate that they misunderstand the purpose of section 51 of the Act. The Tenants commented on the difficulties they have faced in having to move from the residential property, which I find is unfortunate, but an unsurprising outcome, given the housing market in many parts of the Province.

Based on the evidence and authorities before me, I dismiss the Tenants' Application wholly, without leave to reapply.

Conclusion

The Tenants are unsuccessful in their Application. Their claim for compensation under section 51 of the Act is dismissed without leave to reapply, as they provided insufficient evidence to support their claim.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 24, 2020

Residential Tenancy Branch