



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for \$13,080 representing 12 times the amount of monthly rent, pursuant to sections 51 and 62 of the Act;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's daughter ("**SD**") attended the hearing and represented the landlord at the hearing

The tenant testified, and SD confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. SD testified, and the tenant confirmed, that the landlord served the tenant with her evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$13,080;
- 2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting in February 2015. At the end of the tenancy, monthly rent was \$1090 and was payable on the 23rd of each month. The tenant paid the landlord a security deposit of \$500, which was returned at the end of the tenancy.

The rental unit is a laneway house. The landlord lives in the main house located on the same residential property.

The landlord served the tenant with a two month notice to end tenancy for landlord's use (the "**Notice**") on February 1, 2019. It specified an effective date of April 30, 2019. The reason given on the Notice for ending the tenancy was:

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 tenant vacated the rental unit on April 30, 2020. She understood that the tenant's daughter (SD) would be moving into the rental unit. However, the tenant testified that SD did not move into the rental unit. Rather, she submitted, almost immediately after the tenant vacated the rental unit the SD furnished the rental unit with new furniture and listed it for rent on AirBnB.

In support of this testimony, the landlord submitted a number of screenshots from the AirBnB website which show:

- 1) the rental unit available for rent;
- 2) a profile of SD which characterizes SD as a "superhost" who:
 - a. joined AirBnB in April 2019; and
 - b. has 28 reviews from guests; and
- 3) reviews from guests who stayed in the rental unit, the earliest of which is from May 2019 and the latest being October 2019.

The tenant argued that the Notice was not issued in good faith, and that SD never intended to move into the rental unit when the Notice was issued or never used the rental unit for the stated purpose after the tenancy ended.

The tenant claims for compensation equal to 12 times the amount of her monthly rent. She relies on section 51(2) of the Act, which 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.

The landlord does not dispute much of the tenant's testimony. SD admitted that she rents the rental unit of AirBnB. She testified that she posts it as available for 27 days a month, and that, on average, it is rented out on AirBnB for 15 days a month.

SD disagreed that the Notice was issued in bad faith. She testified that, at the time it was issued, she fully intended to move into the rental unit. She testified that she created the AirBnB account in April 2019 not in anticipation of posting the rental unit on AirBnB, but rather so she could rent an apartment of her own when she was travelling to Los Angeles. In support of this, the landlord submitted a receipt from AirBnB dated April 10, 2019 showing that SD rented an apartment in Los Angeles from June 17 to June 22, 2019.

SD testified that she moved into the rental unit on May 1, 2019. However, she testified that roughly a week later her financial circumstances changed, causing her not to be able to reside in the rental unit.

She testified that, in early May 2019, an offer she made to rent retail space (the "**Commercial Unit**") for a small business she was starting up was accepted. In support of this, the landlord entered into evidence an email dated March 7, 2019 from SD's realtor to SD's father. The email indicates that a deposit of \$17,000 had been accepted by a commercial landlord, that the monthly rent of a commercial retail space was \$8,700, and that \$19,540 will become due upon the subjects being removed. SD testified that, despite this email not referring to her by name, that she would be renting the Commercial Unit.

SD testified that she had been looking for commercial retail space for over a year but was not having any success securing a location. She testified that she had put the offer to rent the Commercial Unit without an expectation that the offer would be accepted.

SD testified that, when the offer was accepted, she needed all funds available to her to pay for the business expenses. She testified that an effort to earn money to subsidize her business, she turned to renting the rental unit on AirBnB.

Prior to the end of the tenant's tenancy, SD lived with the landlord in the main house. SD testified that she currently divides her time between the main house and the rental unit (as stated above, the rental unit is occupied with AirBnB guests about 50% of the time). She testified that she keeps her personal effects in the locked closet of the master bedroom of the rental unit. She testified that she pays her mother (the landlord) roughly \$1,000 to "chip in" for expenses every month.

SD argued that her circumstances constitute "extenuating circumstances" as contemplated by section 51(3) of the Act, and as such, the landlord should be exempted from paying the tenant an amount equal to 12 times the monthly rent.

Section 51(3) states:

- (3) 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.

Analysis

I must first note that, contrary to the submissions of the tenant, the tenant does not need to prove that the Notice was not issued in good faith to be able to obtain compensation under section 51(2) of the Act. Whether or not a notice to end tenancy for landlord's use was issued in good faith is relevant to an application to cancel such a notice under section 49(6) of the Act (such an application must be brought prior to tenant vacating the rental unit, and the effect of granting the relief sought would be to permit the tenant to remain in the rental unit).

As such, it is unnecessary for me to determine whether the Notice was issued in good faith. Rather, per section 51(2), I must determine 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

If either of these have not been accomplished, I must consider if the reason for this failure constitutes an "extenuating circumstance" for the purposes of section 51(3) of the Act.

1. Use of the Rental Unit

Based on the testimony of SD, I find that the rental unit is made available for rent on AirBnB for 27 days a month. I also find that it is actually rented out on AirBnB for approximately 15 days a month.

I find that such usage does not constitute using the rental unit for the stated purpose of ending the tenancy. I find that SD treats the rental unit as a source of income first, and an accommodation second. I base this conclusion on the fact that it is listed for rent on AirBnB on an almost continuous basis. Such conduct is not in keeping with using the

rental unit as a living accommodation (as the case might be say, if SD posted the rental unit on AirBnB only rarely, when she was not using it).

As such, I find that the rental unit has not be used for the stated purpose for ending the tenancy for at least six months.

Accordingly, I must determine if the landlord is afforded the protection of section 51(3) of the Act.

2. Extenuating Circumstances

I accept SD's testimony as to why she did not move into the rental unit. I accept that her offer to rent a retail space was accepted, and that this changed her financial circumstances. I must now determine if this is an "extenuating circumstance".

Policy Guideline 50 discusses extenuating circumstances in the context of section 51(3). It states:

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

A common factor between the circumstances that the policy guideline suggests are extenuating circumstances is that the incidents are not reasonably anticipated or are beyond the landlord's control.

The events described by the SD are neither beyond her control nor difficult to have anticipated. I find that, prior to the Notice being issued, the landlord knew that SD was attempting to secure commercial retail space. I find that it was not unreasonable for the landlord or SD to think that the offer SD made to rent the Commercial Unit would be accepted. I find that the landlord and SD reasonably ought to have known that, if SD

was successful in obtaining the Commercial Unit, SD's financial circumstances may change, and that, as a result, she might not be able to move into the rental unit.

I note that SD pays the landlord \$1,000 per month for expenses. I am unsure what SD and the landlord had agreed SD's monthly rent would have been, had she moved into the rental unit full time, but I note that the tenant's rent was only slightly higher than \$1,000. It would seem to me that, rather than needing to minimize her expenses, the reason for renting out the rental unit was so that SD could generate an additional income stream to fund her business.

I find that the foregoing is not an "extenuating circumstance". I find that the landlord and SD could have reasonably predicted the current circumstances. I appreciate that the landlord and SD's financial situation may be currently strained, but that is not a sufficient basis to have ended the tenancy or to qualify for the protection afforded to landlord by section 51(3).

I do not accept that the fact SD has had difficulty in the past securing retail space to be a reason why the acceptance of her offer to rent the Commercial Unit was unexpected. When making an offer, a party must account for the possibility that the offer be accepted and be prepared to accept the consequences of such an acceptance.

I find that it would not be "unreasonable and unjust" to require the landlord to pay the tenant an amount of 12 times the monthly rent. The circumstances that led to inability to comply with section 51(2) were entirely anticipatable and avoidable. Accordingly, I order that the landlord pay the tenant \$13,080 (12 x \$1,080).

As the tenant is successful in her application, she is entitled to recover her filing fee from the landlord (\$100).

Conclusion

Pursuant to sections 62, 65, and 72 of the Act, I order that the landlord pay the tenant \$13,180.

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: April 28, 2020

Residential Tenancy Branch