Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for damage or compensation under the Act from the Landlord in the amount of $18,522.00.

The Tenant and the Landlord 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. During the hearing the Tenant 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.

Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing within three days of applying for dispute resolution. The Tenant said that he served the Landlord with his Application, Notice of Hearing, and evidentiary submissions by registered mail on December 23, 2019. He also said that he sent a second package of evidence to the Landlord in May 2020 by registered mail, but he did not have the tracking number, nor did he remember on what day he sent it. The Landlord said she received the first package of documents from the Tenant with plenty of time to review it; however, the Landlord said she did not receive the second set of documents until May 13, 2020, which she said meant that the Tenant was late in sending it to her, pursuant to the Rules.

Rule 3.15 states:

> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy

> Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.
>
> [emphasis added]

The Landlord said she received the Tenant's second package with documentary evidence on May 13, 2020. As the hearing was on May 22, 2020, this meant that the Landlord received the Tenant's second package nine days prior to the hearing, which is within the required timelines set out in the Rules. Accordingly, I find that the Tenant served the Landlord with the required documents in compliance with the Act.

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.

In describing the hearing process to the Parties, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 15, 2013, with a monthly rent of $1,500.00 that rose to $1,543.50, which was due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $750.00, and no pet damage deposit.

The Parties agreed that the tenancy ended, because the Landlord served the Tenant with a Two Month Notice to End the Tenancy for the Landlord's Use dated November 20, 2019 ("Two Month Notice"). The Parties agreed that the Two Month Notice was

signed, dated, and served on the Tenant by mail on November 21, 2018, and that it had an effective vacancy date of January 31, 2019. The ground for the eviction listed on the Two Month Notice was that the rental unit would be occupied by the Landlord or a member of the Landlord's close family (parent, spouse or child).
The Tenant applied for compensation pursuant to section 51 of the Act because, the Tenant testified, the Landlord had not fulfilled the stated purpose on the Two Month Notice. Section 51(2) states that a 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.
>
> [emphasis added]

The Landlord said that her daughter moved into the rental unit, because the family's cousin was staying with them and the daughter did not get along with him. The Landlord pointed out all the improvements her daughter made to the rental unit, such as new flooring, plumbing, and blinds. The Landlord said the daughter had these renovations done, because she did not know how long she would be living there. The Landlord gave evidence from these trades people that the daughter was living in the rental unit when they were doing the work for her.

However, the Landlord also said that she had another motivation to evict the Tenant:

> We had no intention of moving him out from either side, but he was breaching our insurance contract, with multiple people coming and going. It raises questions of insurance.

The Landlord also said about the residential property that they: "Never insured it as a vacant dwelling with no income."

The Tenant said he talked to neighbours from his time living in the rental unit, and they told him that no one had moved in after the Tenant moved out - until August 2019. That

is the time that the Landlord said her daughter moved back to the family home, as the cousin had stopped living with them.

The Tenant submitted a statement from neighbours that the Parties agreed live across the street from the rental unit. This statement contained copies of both neighbours' driver's licences and says:

> December 2, 2019
>
> Re: Duplex at [rental unit address]
>
> To whom it may concern:
>
> The above-mentioned duplex was unoccupied from December 25, 2018 until approximately mid to late August 2019. No one lived on either side during those months. This was observed by the undersigned who live directly across the street from the duplex.
>
> Yours truly,
>
> [Signature] [Signature]
> [I.K.] [S.K.]
>
> [BCDL For I.K.] [BCDL For S.K.]

The Parties agreed that [I.K.] is very particular about his lawn and that he sometimes expresses irritation at such things as rental unit visitors parking on his side of the street, and anything having to do with his lawn. The Landlord said that her daughter found these neighbours to be unfriendly, as they would never wave back at her when she waved at them. The Landlord implied that the neighbours do not like them, which puts the reliability of their statement into question.

The Tenant said that he agreed that [I.K.] can be irritable; however, he said that the neighbour is equally irritated by everyone.

The Landlord submitted statements from trades workers who, the Landlord said, did work for the Landlord's daughter at the rental unit. In one such statement, [D.B.] said:

May 2, 2020

To whom it may concern

I received a call from Mr. [B. (Landlord)]. At the end of January 2019 to do some repair work at a house his daughter was at. The house at [rental unit address] in [City] needed some holes fixed, doors fixed and plumbing fixed. I saw his daughter; she was living there. I also saw his daughter later when I did some work at [rental unit address].

[D.B]

[D.B.'s BCDL also copied onto statement]

The Landlord also included a copy of a receipt made out to [S.B.] for $300.00 from [D.B.], and a copy of cheques made out to [D.B.] for $700.00 and $500.00.

The Landlord also submitted a statement from [J.A.], who said:

May 4th, 2020

To whom it may concern,

This is to inform that I visited Mr. [B. Landlord's husband] to take measurements and give a quote for window installation for [rental unit address]. I met Mr. [B.] at [address of other side duplex], the next door duplex unit, where he was staying and Mr. [B.] took me to unit [rental unit address]. After I finished taking measurements we went back to unit [other side of duplex] to discuss pricing and have some tea. I came back at a later date to collect payment at [rental unit address].

[Signature]
[J.A.]

The Landlord submitted similar statements from other trades workers who installed flooring and baseboards, cheques written to trades from the Landlord's family members, a statement from the daughter's grandparents, a statement from a realtor. All of these people stated that the Landlord's daughter lived at the rental unit at some point between February 1, 2019 and July 31, 2019. Some statements indicated that the Landlord's husband lived there, too, at times.

The Landlord said that the tenant, [E.T.], in the other side of the duplex had moved into the rental unit when the daughter moved out. They submitted a statement from [E.T.], which said:

> April 18, 2020
>
> To Whom It May Concern:
> RE: [rental unit address]
>
> I currently reside at [rental unit address]. I moved into this house in August of 2019. Before moving into [rental unit address], I lived at [address of other side of duplex] for the month of July. While I was living at [other side of duplex], my current landlord, [I.B. (daughter)], was living in [rental unit address]. I also noticed her dad, [S.], living there with her at times. When [I.B.] moved out at the end of July, I decided to move into [rental unit address] because I liked that side of the duplex better.
>
> I am paying $1700 rent a month for the house.
>
> [signature]
> Thank you,
> [E.T.]

The Landlord submitted other statements from her daughter's friends, colleagues, and business partner, all saying that she lived in the rental unit during the six months after the eviction date.

The Parties agreed that the Landlord (or her daughter), have now re-rented the rental unit to [E.T.], who pays $1,700.00 per month, or almost $200.00 more than the Tenant was paying.

The Landlord said:

> In the five years they lived there, we raised their rent one time. We have to give a three-months' notice. We raised it by the percentage that was allowed by the Board.
>
> My daughter got new floors and plumbing, because we didn't know how long she was going to stay there. If my nephew needed my help, I would help him for as

> long as necessary. My daughter had blinds put in. . .she had the full intention of staying there. She would have stayed there for years with my nephew being here. If I needed to keep him with me that long, I would have. She could have stayed there. If we wanted to rent it, we could have rented it after six months. It could have been years. If he hadn't gone to rehab, he would have been with me until he straightened out. Who knows how long that could have taken?

The Landlord did not point out evidence of a statement from her daughter in this regard.

Analysis

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

I have before me evidence from both Parties with opposing versions of events, in terms of whether the daughter lived in the rental unit or not. Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

I find it suspiciously convenient that the Landlord's nephew moved elsewhere to allow the Landlord's daughter to move back to the family home and re-rent the rental unit exactly six months after the effective vacancy date of January 31, 2019. This raises questions in my mind about the veracity of the Landlord's position.

Section 51(3) of the Act 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. [emphasis added]

As explained in Policy Guideline 50 (“PG #50”):

> 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]

PG #50 goes on to say:

> 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. A landlord cannot end a tenancy for renovations or repairs and then perform cosmetic repairs, or other minor repairs that could have been completed during the tenancy. This is because section 49 clearly establishes that a tenancy can only be ended for renovations or repairs that are:
>
> - so extensive that the rental unit must be vacant in order for them to be carried out, and
> - the only manner to achieve that vacancy is by ending the tenancy.
>
> If the landlord performs cosmetic repairs, the landlord has not accomplished the purpose for ending the tenancy.

The Landlord has provided an abundance of evidence indicating that her daughter lived in the rental unit at some time during the six months after the Tenant was evicted. However, she moved out immediately after the six months ended and re-rented it to [E.T.] for more money than was being charged to the Tenant.

The legislation and Policy Guidelines refer to the close family member living in the rental unit for “at least” six months. An online search of the definition of “at least” leads to results of: “not less than; at the minimum” or “not less than” and “more than”. I find that the Landlord’s family has interpreted “at least” to mean the maximum amount of time in

which the daughter was required to live there, before she could rent it out for a higher rent.

Further, I find from the Act and PG #50, that the intent of section 49(3) is for a landlord or a close family member to move into the rental unit for more than just the six months noted in the Policy Guideline. Section 49(3) of the Act states:

> (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.
>
> [emphasis added]

Policy Guideline #2A, "Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member" states:

> Section 49 of the *Residential Tenancy Act* (RTA) allows a landlord to end a tenancy if the landlord:
>
> 1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;
>
> **. . .**
>
> **B. GOOD FAITH**
>
> In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.
>
> Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).
>
> If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of

> at least 6 months, the landlord would not be acting in good faith.
>
> If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.
>
> If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.
>
> The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months **and** that they have no other ulterior motive.

I find that the intent is not that a landlord must live in a rental unit for six months and then vacate it (newly renovated), to re-rent it for a higher rate. This is what the Act is trying to prevent landlords from doing.

I found it curious that the Landlord did not submit a statement from her daughter setting out her intention for the rental unit. Rather, there were statements from trades people who must have appreciated getting the daughter's and her father's business, and who wanted to make the Landlord happy. There were statements from the Tenant's friends and colleagues and grandparents confirming that she lived there during the timeframe in question, which she may have. In contrast, I have before me statements from a neighbour living directly across the street who directly countered the Landlord's evidence.

I find it more likely than not that the Landlord's daughter moved furniture into the rental unit and may have lived there at times, while renovations were being done. However, I find on a balance of probabilities that there was no good faith intention to move into the rental unit for any longer than she had to, in order to comply with the legislation. However, as PG #2 states, the family member must occupy the rental unit for **at least** six months **and** have no ulterior motive.

When I consider the evidence before me, overall, I find on a balance of probabilities that it is more likely than not that the daughter did not intend to live in the rental unit long-term, but rather, that she lived there for appearance purposes only. I find the Landlord's real intention was to renovate the unit, raise the rent, and eliminate the perceived insurance issues surrounding the Tenant's behaviour in the unit.

The effective vacancy date in the Two Month Notice was January 31, 2019, and I find that within six months, by August 1, 2019, the stated purpose for the Two Month Notice

had not been accomplished.

Based on the evidence before me, overall, I find that the Tenant is successful in his Application, because I find the Landlord breached section 49 and 51 of the Act, by not having a good faith intention for the Landlord's close family member to occupy the rental unit beyond "at least" six months after the end of the tenancy. I find that the Landlord's daughter's behaviour in moving in temporarily, did not accomplish the stated purpose for ending the tenancy in good faith.

I, therefore, award the Tenant twelve times the rent of $1,543.50 or $18,522.00. Accordingly, I grant the Tenant with a Monetary Order of **$18,522.00**, pursuant to section 51(2) of the Act.

Conclusion

The Tenant's claim for recovery of 12 times the monthly rent is successful in the amount of $18,522.00. The Landlord did not provide sufficient evidence to establish their good faith intention for a close family member to occupy the rental unit – the purpose of the Two Month Notice.

I, therefore, grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **$18,522.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: June 10, 2020

Residential Tenancy Branch