Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

In this dispute, the tenants seek compensation in the amount of $12,000.00 against their former landlords pursuant to sections 51 and 67 of the *Residential Tenancy Act* (the "Act"). They also seek recovery of the $100.00 filing fee under section 72 of the Act.

The tenants applied for dispute resolution on March 6, 2020 and an arbitration hearing was held, by way of teleconference, on July 13, 2020. The tenants, landlords, counsel for the landlords, and two witnesses attended and participated in the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application. As such, not all of the parties' testimony will be reproduced in this decision.

Issues

1. Are the tenants entitled to compensation as claimed?
2. Are the tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy, which was a periodic (that is, a month to month) tenancy started on March 24, 2018 and ended on May 31, 2019. Monthly rent was $1,000.00 and the tenants paid a security deposit of $500.00. A copy of the written Residential Tenancy Agreement was submitted into evidence.

On March 24, 2019 the landlords gave the tenants a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). A copy of the Notice was submitted into evidence. Page one of the Notice indicated that the tenancy was to end on May 31, 2019 (the "effective date"). Page two of the Notice indicated that the tenancy was ending because the "rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child)". The Notice was served by being posted on the door of the rental unit, in accordance with the Act.

The tenants, on April 17, 2019, gave a ten-day notice to end the tenancy on May 2, 2019. They vacated the rental unit on May 2, 2019.

In this application the tenants allege that the landlords breached section 51 of the Act "because we believe that the landlords were not acting in good faith." As such, they seek compensation equivalent to twelve months of rent. They further argued that, in their opinion, the landlords did not use the rental unit for a period of six months as they were supposed to do, as per the reason given in the Notice for ending the tenancy.

In support of their claim, the tenants referred me to a copy of real estate listing of October 2, 2019, in which the split-level home (in which the basement rental unit is located) was listed for sale. The listing makes mention of the basement suite. The house was sold on October 18, 2019, and (according to the landlords, the tenants testified) the landlords moved out on November 30, 2019.

Landlords' counsel called his first witness, the landlord J.P. He testified that his family, his wife, and two daughters (aged 9 and 11) occupied the upper portion of the house. However, they needed more space because the daughters spent the weekends with him and a shared room upstairs for the two girls was "too small." They "needed the full use of the house," the landlord added.

As he recalled, the landlord testified that the move-out inspection occurred on Thursday, May 2, 2019 but he believes the tenants moved out on Wednesday, May 1, 2019. The "first weekend after [the tenants] move out the girls moved in," the landlord testified. The first day of the first weekend to which the landlord referred would be Saturday, May 4, 2019. "We moved all of the girls' stuff from the upstairs into the downstairs," he explained. One of the girls moved into one of the bedrooms and the other daughter moved into the master bedroom, both bedrooms being downstairs. Photographs of the rental unit, along with photographs of the girls' bedrooms, were submitted into evidence.

The landlords purchased a new home on October 1, 2019 and were to take possession of the home on November 28, 2019. A copy of the Contract for Purchase and Sale for the home was submitted into evidence. On October 18, 2019, the landlords sold the property (in which the rental unit was located) and were to provide vacant possession to the buyers on November 30, 2019. A copy of that contract was also tendered into evidence. The landlord testified that they moved out on November 28, 2019.

Also called as a witness was the landlords' realtor, who testified under oath that she observed the girls' bedrooms in the rental unit as depicted in the photographs taken. She also testified that the last time she saw the rental unit as depicted was "around the 27th or 28th of November."

One of the landlord's two daughters, M., a minor, was briefly called as a witness. She recalled moving into the downstairs suite after the tenants had vacated, and she confirmed, under direct examination, that the photograph depicted her bedroom. Finally, she recalls moving out before the family moved into their new home.

After M. had finished testifying, landlords' counsel requested to call the landlord's 9-year-old daughter as a witness. I inquired of counsel whether this was truly necessary, given the witness' young age; he acknowledged that this witness would provide essentially the same testimony as the 11-year-old had, and as such it was not necessary for him to call her as a witness. She was not called.

In final submissions, the tenants reiterated that the landlords did not use the property for at least six months as required by the Act. They also added that the current property owner listed the rental unit for rent on February 3, 2020, and that landlords, in general, have an unfair advantage over tenants.

In his final submissions, landlords' counsel summarized that the landlords' family is a young, blended family with two children, and that they have outgrown their living space. He again noted that the family moved into the rental unit the first weekend in May 2019 after the tenants had vacated, and that they started using the basement right away. And, he noted that the landlords moved out of the property before the new owner took possession on November 29, 2019. Thus, he concluded that the landlords were in the rental unit for a period of about six months. References to "splitting hairs" and a "technicality" with the legislation were made, but he did not elaborate on these points.

Finally, landlords' counsel submitted a brief defense as it pertains to "extenuating circumstances" under section 51(3) of the Act, which I turn to in detail, below.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Compensation under section 51(2) of the Act

The tenants seek compensation under section 51 of the Act which states, in its entirety:

> (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
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> (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
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> (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
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> (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
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> (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
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> (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.
>
> (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.

What this means (and as explained further in *Residential Tenancy Policy Guideline 50 – Compensation for Ending a Tenancy*) is that section 51(2) of the Act 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, for example. The purpose that must be accomplished is the purpose on the notice to end tenancy.

A “reasonable period” of time means an amount of time that is fairly required for the landlord to start doing what was planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy, or, using it for that purpose as soon as possible or as soon as circumstances permit. It will usually be a short amount of time.

At the outset, there was no dispute by the tenants that the landlords occupied the rental unit within the meaning of “occupied” under the Act. It was clear from the evidence, both that of the oral testimonies of the landlord and his witnesses, and that of the photographic evidence – none of which were questioned or disputed by the tenants – that the landlords and their close family members occupied the rental unit. However, what is in dispute is whether such occupancy was for a period of 6 months.

In this case, the effective date of the Notice was May 31, 2019. Neither party provided any submission or explanation as to what a reasonable period might be. This component is rather extraneous, though, given that the landlords and their immediate family (that is, the daughters) were comfortably established in their new bedrooms by May 31, 2019. Any “reasonable period,” which essentially acts as a transition period

between a tenant leaving and a landlord occupying the rental unit, or using it for some stated purpose, had long since ended by the effective date of the Notice.

Thus, I find that the six-month countdown started on June 1, 2019, the earliest date after the effective date of the Notice. (Keeping in mind, of course, that sections 51(2)(a) and (b) of the Act use the language “after” the effective date of the notice.) The minimum six-month period during which the landlords were required to occupy the rental unit therefore ended on November 30, 2019. However, the landlords vacated the rental unit on November 28, 2019, with the new homeowner having vacant possession of the property on November 29, 2019 at 5:00 PM.

I conclude, taking into account the above-noted findings of fact, that the landlords did not, *prima facie,* use the rental unit for the state purpose of occupancy for at least six months’ duration. Rather, the landlords occupied the rental unit for a period of 5 months and 28 days after the effective date of the notice. While landlords’ counsel briefly remarked about the splitting of hairs and a technicality in the legislation (perhaps referencing the six-month duration), the Act is clear: at least 6 months' duration.

Having found that the landlords were in breach of section 51(1)(b) of the Act, I must now turn to the issue of whether there were extenuating circumstances that prevented the landlords from using the rental unit for a period of 6 months.

The meaning of “extenuating circumstances,” while not defined in the Act, is briefly examined in policy guideline 50, and which states that “[a]n 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.” Various examples of situations where one could find there is an extenuating circumstance, and a few examples of scenarios where there would not be an extenuating circumstance, are then provided in the guideline. What may be inferred from these few examples is the principle that an extenuating circumstance must be unforeseen, and not something arising from a lack of due diligence or an action within the control of the respondent.

Landlords’ counsel submitted that two extenuating circumstances existed in this case: the landlord’s wife’s pregnancy, and, the family’s outgrowing of the property.
With respect, neither circumstance can be held to be unforeseen (though, details of the pregnancy and whether this was planned or unplanned was not provided in any evidence submitted), or, out of the control of the landlords. Any family that continues to grow, and the decisions of the parents of any such family to expand their family, will be

a situation where it may be reasonably foreseen that the home in which they live may or may not be large enough to accommodate that growing family.

Moreover, neither circumstance, the pregnancy nor the expanding family, I find were extenuating circumstances that in any way prevented the family from residing in the property and in the rental unit for the statutorily required six-month period.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for compensation under section 51(2) of the Act in the amount of $12,000.00.

Claim for Recovery of the Filing Fee

As for this component of the tenants' application, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenants were successful in their application, I therefore grant their claim for reimbursement of the $100.00 filing fee.

A total monetary award of $12,100.00 is therefore granted to the tenants.

Conclusion

I hereby grant the tenants a monetary order in the amount of $12,100.00, which must be served on the landlords. If the landlords fail to pay the tenants the amount owed, the tenants may file, and enforce, the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: July 15, 2020

Residential Tenancy Branch