



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

On April 3, 2020, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The property owners and their son (“the Landlord”) and the Tenants were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The Landlord and Tenants were provided with an opportunity to ask questions about the hearing process. The parties provided affirmed testimony and were provided with the opportunity to present oral testimony and to make submissions during the hearing. The Landlord and Tenants confirmed that they have exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Are the Tenants entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The Landlord and Tenants provided testimony agreeing that the tenancy began on July 1, 2018 as a one-year fixed term tenancy to continue until June 30, 2019. Rent in the amount of \$2,400.00 was due to be paid to the Landlord by the first day of each month.

The Tenants paid a security deposit of \$1,200.00 to the Landlord. The Tenants and Landlord provided a copy of the tenancy agreement.

The Landlord and Tenants testified that the tenancy ended when the Tenants vacated the rental unit on June 30, 2019 after the Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property ("the Two Month Notice").

The Tenants and Landlord provided a copy of the Two Month Notice. The Two Month Notice is dated March 1, 2019 and has an effective date of June 30, 2019. The reason cited for ending the tenancy is:

The rental unit will be occupied by the Landlord or the Landlord's close family member spouse or a close family member.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

The Two Month Notice also contains information for the Landlord and Tenant regarding additional compensation. The Notice provides that if the Landlord does not take steps towards the purpose for which the Notice was given within a reasonable period after the effective date of the Notice, the Landlord must compensate the Tenant and amount equal to 12 months' rent payable under the tenancy agreement.

The Tenants accepted the Two Month Notice and moved out of the rental unit. The Tenants testified that the Landlord did not move into the rental unit and use the unit for a six-month period.

The Tenants testified that upon receiving the Two Month Notice they sent an email to the Landlords' son Mr. R.D. and asked who was moving into the unit. The Tenants testified that the Landlord did not identify who was moving in. The Tenants submit that Mr. R.D. replied we are just deciding amongst our family who will live in what property. It will be as per the notice, an immediate family member of the Landlord. The Tenants submitted that it would be reasonable that the Landlords would have definite plans on who was moving into the unit before issuing the Two Month Notice. The Tenants provided a copy of the March 1, 2019 email exchange with the Landlord.

The Tenants testified that after they moved out of the rental unit on June 30, 2019, they noticed that nobody was living in the rental unit. They testified that they drove past the rental property every day for two months and less frequently afterwards and did not see any activity of a moving truck or anyone moving in. The Tenants testified that the lights of the rental unit were never on and there was never a car parked on the premises. The Tenants testified that they knocked on the door of the rental unit and there was no answer. The Tenants testified that they spoke to a neighbor across the street from the residential property who informed them that nobody had moved into the rental unit.

The Tenants provided six photographs they took of the rental unit in November and December 2019 showing the rental unit being completely dark.

The Tenants provided copies of three video recordings taken of the property in November and December 2019 showing the rental home and a view into the upper Livingroom showing that the room was almost entirely empty of furniture.

The Tenants submitted that the Landlord did not move into the rental unit within 15 days of when the Tenants vacated the rental unit. The Tenants referred to Residential Tenancy Branch Policy Guideline #50 Compensation for Ending a Tenancy that provides a reasonable period for the Landlord to start using the rental unit would be about 15 days after the Tenants vacate.

The Tenants testified that they stopped driving by the rental unit in late November 2019 when they determined the Landlord would not be moving into the rental unit.

The Tenants testified that in December 2019 they found an advertisement and photographs on a local website showing that the rental unit was for rent. The Tenants provided a copy of the rental advertisement and 14 photographs from the listing dated December 18, 2019.

The Tenants testified that on December 18, 2019 they emailed the Landlords' agent and asked if the photographs of the advertisement were current and they were informed that the photographs were recent. The Tenants submitted that the photographs received from the Landlord's agent show the rental unit is empty prior to December 18, 2019.

The Tenants testified that the agent informed them that the rental unit is currently vacant which the Tenants state is confirmation that the Landlord did not live in the unit for a six-month period as required under the Act. The Tenants submitted that the agent stated, "it is empty now so no one will move out at the end of month". The Tenants

provided a copy of the emails exchanged with the Landlords' listing agent. The Tenants submitted that their video evidence along with the evidence from the Landlords agent supports that the rental unit was empty prior to December 18, 2019.

The Tenants testified that the Landlord rented the unit out to new occupants starting January 5, 2020. The Tenants testified that the new occupants are not related to the Landlord.

The Tenants testified that in April 2020 they again asked the Landlord who had moved into the unit when they moved out and the Landlord replied that he has no obligation to provide them with that information.

On April 3, 2020 the Tenants applied for dispute resolution seeking compensation of \$28,800.00 which is twelve months rent payable under the tenancy agreement.

In reply, the homeowner stated that her son Mr. R.D. would be making providing testimony in response to the Tenants' claim.

The Landlord testified that he sold his house in February 2019 and temporarily moved in with his parents. He testified that he needed sufficient space for himself and his family. The Landlord provided a copy of the contract for purchase and sale.

The Landlord testified that he had told the Tenants that he would be moving into the rental unit. He testified that he lived in the rental unit from July 2019 to December 2019. The Landlord provided a copy of a signed but undated letter from the occupants living in the lower suite at the dispute address. The letter states that the owners' son moved into the upstairs unit in July 2019. The letter provides the name of a barrister who is witness as to the signature of the occupants only.

The Landlord testified that he had put some possessions in storage after he sold his house and later, he was selling his furniture so that is why the living room looked empty. The Landlord stated that he was building a new house elsewhere. He submitted that he moved some furniture into the garage for sale and pick up. He testified that he parked his car in the garage on the property. The Landlord provided a copy of a receipt for a storage facility from February 2019 to July 5, 2019.

The Landlord provided copies of advertisements where he was selling furniture and had placed a sofa in a garage for pick up.

The Landlord stated that he has the right to come and go and the right to sell furniture and have the lights turned on or off.

The Landlord stated he had gone on vacation in December 2019 and that the rental unit was re-rented to new Tenants on January 5, 2020.

In reply, the Tenants testified that the garage on the property was leaky and unusable and not suitable for storage or parking a vehicle. The Tenants submitted that the Landlord could have provided evidence, such as a drivers licence to prove he had moved into the rental unit, but he did not provide anything.

In reply the Landlord testified that the garage is big enough for his vehicle and that his drivers licence shows his new address.

Analysis

Section 49 of the Act provides circumstances where a Landlord can end a tenancy for Landlord use of property. Section 49 (3) of the Act provides that 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.

Section 51 (2) of the Act provides:

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. [my emphasis]

(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.

Residential Tenancy Policy Guideline # 50 provides:

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they 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 the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

"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.

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see also: Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that "occupy" means "to occupy for a residential purpose." (See for example: Schuld v Niu, 2019 BCSC 949) The result is that a landlord can end a tenancy to move into the rental unit if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

Other definitions of "occupy" such as "to hold and keep for use" (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49

does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

Extenuating Circumstances

With respect to extenuating circumstances, Policy Guideline #50 provides the following:

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.

The Policy Guideline also provides 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.*

Compensation under section 51 of the Act

Based on all of the above, the evidence and testimony from the Landlord and Tenants, and on a balance of probabilities, I find as follows:

I find that the Landlord issued a Two Month Notice to End Tenancy for Landlord use of Property under section 49(3) of the Act.

I find that the Tenants accepted the Two Month Notice and vacated the rental unit on June 30, 2019.

I have considered the Residential Tenancy Branch Policy Guidelines and I have considered that the intention of the Act is that a Landlord must intend in good faith to use the rental unit as living accommodation or as part of their living space, and that vacant possession would fail to meet the Landlords obligation. I am mindful that the policy guideline provides that the Landlord, close family member, or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the

requirement under section 51(2). I find that the Landlord was obligated under the Act to use the rental unit as living accommodation until December 31, 2019.

I accept the email statement from the Landlords' agent that the photos showing an empty rental unit had been recently taken and that the rental unit was currently vacant so no one would need to move out at the end of month. I find that the 14 photographs copied from the rental listing show that the rental unit was empty as of December 18, 2019.

I note that other than a letter from the occupants living in the lower unit, the Landlord did not provide any documentary evidence such as utility bills or other evidence to support his testimony or prove that he had actually moved into the rental unit.

While the Landlord may have moved into the rental unit in July 2019, I find that the Landlord moved out of the rental unit prior to December 18, 2019. I find the Landlord failed to live in the upper unit for a six-month duration. Pursuant to section 51(2) of the Act, the Landlord must pay the Tenants the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I award the Tenants a monetary order in the amount of \$28,800.00.

I have considered section 51(3) of the Act and the policy guideline regarding compensation and extenuating circumstances. I have considered that the Landlord went on vacation and I have found that the Landlord moved out of the rental unit prior to December 18, 2019. There was no evidence of when the Landlord moved out and when the Landlord returned from vacation. The letter from the lower occupant indicates the Landlord moved into the unit in July 2019 but makes no mention of how long he lived upstairs. I find that the Landlord's decision to move out of the unit and go on vacation is not an extenuating circumstance. The Landlord could have resided in the unit for the entire 6 months. I find that there is insufficient evidence from the Landlord to establish that there are any extenuating circumstances present making it unjust for the Landlord to have to pay compensation.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful with their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$28,900.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord did not use the rental unit for the purpose stated within the Two Month Notice for a six-month duration. The Landlord must pay the Tenants the amount of 12 months' rent payable under the tenancy agreement.

The Tenant is granted a monetary order in the amount of \$28,900.00 for the breach under section 51 of the Act and the cost of the filing fee.

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: August 19, 2020

Residential Tenancy Branch