



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing and gave affirmed testimony. The director of the landlord company also attended, and was accompanied by his daughter, who gave affirmed testimony and indicated that her father did not speak English. Legal Counsel for the landlord also attended, and called 1 witness who gave affirmed testimony. The parties, or Legal Counsel were given the opportunity to question each other and the witness and to give submissions.

During the course of the hearing Legal Counsel submitted that not all of the tenant's evidence was provided to the landlord. It was determined that the tenant's Monetary Order Worksheet, which the tenant had uploaded to the Residential Tenancy Branch system 3 times, was not provided to the landlord. I informed the parties that the Monetary Order Worksheet is a document intended mostly for my benefit, and the hearing proceeded. The tenant also provided evidentiary material later than the time required, which was not provided to the landlord. Any evidence that a party wishes to rely on must be provided to all other parties, and I decline to consider the late evidence. All other evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a claim for monetary compensation for the landlord's failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy

for Landlord's Use of Property, or for loss of quiet enjoyment, or for rent differential, or for moving expenses?

Background and Evidence

The tenant testified that this month-to-month tenancy began on October 1, 2017 and ended at the end of July, 2019. Rent in the amount of \$1,100.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$550.00 which was returned in full to the tenant. The rental unit is a basement suite, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that the landlord purchased the home about the end of 2018, while the tenant was already residing there. The new owners asked the tenant to sign a document saying that they were new owners and the document specifies that the original tenancy agreement remains in effect, and the new document specifies who the tenant should pay rent to. A copy has also been provided for this hearing.

The tenant received a text message from the landlords stating that the landlords were moving into the rental unit and asked the tenant to leave within 4 months, but if the tenant left early, the landlords would compensate the tenant with another months rent. The tenant asked the landlords to send an official notice to end the tenancy. The landlords did so by leaving it at the tenant's door, and a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property has been provided for this hearing. It is dated July 5, 2019 and contains an effective date of vacancy of September 30, 2019. The reason for issuing it states: "The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit." The tenant was given compensation by the landlords of the last month's rent and an additional month, as promised, for vacating earlier.

The tenant attended the rental unit after being told by friends that they had attended there previously thinking the tenant still resided there, and no one was there. The tenant looked through the window, and it was essentially used as a storage room.

The rental home is a luxury home containing 2 basement suites, both of which were tenanted, and the rest of the home was being rented on Air BNB. There were oud parties all the time and the landlords made minimal effort to control that. Numerous times there was drinking and drug use around the pool, close to the tenant's entry. Maintenance became an issue, nothing was being addressed and rats infested due to

garbage laying around. The tenant approached the landlord's daughter numerous times. The manager of the Air BNB portion of the home threatened eviction and was quick to tell the tenants in the basement suites to get out. The previous owners looked after things, but not the new owners or the Air BNB manager. The tenants would approach guests who didn't even know there were long-term tenants in the basement suites. One guest walked right into the tenant's rental unit. Sound files have also been provided for this hearing to illustrate the noises from the Air BNB guests.

The tenant claims \$1,940.40 for storage fees, moving supplies, laborer fees and the cost of U-Haul for moving out of the rental unit. The tenant also claims 12 months rent for the landlord failing to use the rental unit or the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant also claims the difference between the rent paid at the rental unit and the rent the tenant had to pay at his new rental unit, which is a difference of \$395.00 per month. The landlord had told the tenant that he wouldn't have to move out for a couple of years, which would allow the tenant to remain in the rental unit until the tenant had graduated, and the tenant claims the differential for 12 months, or from October 1, 2019 to June 30, 2020, given that the tenant left the City at the beginning of July, 2020.

The landlord's agent (daughter) testified that the landlord is a company and her father is the only director. The landlord and spouse owned another house but sold it in February, 2020 intending to move into the rental unit. Since it's just the landlord and his spouse, a small unit is all they need.

The landlord hoped that the tenant could move out in September, 2019. The landlord's daughter talked to the tenant who asked if he could still get 2 months rent as compensation if he moved out by the end of July, 2019, and the landlord agreed.

The landlord entered into a tenancy agreement with a person who used the home for an Air BNB and posted advertisements. A copy of the tenancy agreement has been provided for this hearing which specifies a tenancy commencing January 1, 2019. When the tenant had problems about noise or garbage, he would send a text message to the landlord's agent who would forward them to the Air BNB tenant. She also told the tenant that he could deal directly with the Air BNB tenant. However, the City received a lot of complaints about the Air BNB and the Air BNB tenant received a Stop Service Order.

The rental unit is still empty. The landlord was going to move into it early October, 2019 but the landlord's father got sick and the landlord and his wife went back to China on September 3, 2019, where he lived. Unfortunately he passed away and after funeral arrangements were completed, they returned by the end of October and lived with the

landlord's agent. The landlord was very sad and tired and decided to stay with the landlord's agent till Christmas break and move into the rental unit at that time.

However, in early December, 2019 the landlord's spouse lost a parent, who also resided in China, and the landlord and spouse went back. The landlord returned on January 29, 2020 but at that time COVID-19 broke out in China and they had to self isolate in a hotel for 2 weeks together.

The landlord's family had a meeting, and given that the pandemic started in Canada as well, it was decided that living at the Air BNB was not safe so the landlord and spouse are still residing with their daughter until the pandemic passes.

The landlord's agent also testified that both basement suites were given notices to end the tenancies so the landlords can occupy both for living and storage. One of the units is a 2 bedroom suite. No one has moved into either unit.

The landlord's witness (JC) testified that he manages 3 floors of the rental home as an Air BNB. It includes the top floor, kitchen and theatre room, but not the basement suites.

The witness posted the advertisements but tenants in the basement suites dealt with the landlord directly.

If complaints were received, the witness would call guests and tell them to be quiet. There were noise complaints and the short-term rentals were suspended on May 10 till sometime in September, 2019 by the City. The witness installed noise sensors and cameras, and updated their rules about parties and visitors.

The tenant submits that the landlords decided to remove tenants so they could make more money on Air BNB.

Counsel for the landlord submits that extenuating circumstances prevented the landlords from moving in, such as trips to China and COVID-19.

Analysis

There are 4 parts to this dispute: a claim that the landlord did not use the rental unit for the purpose contained in the notice to end the tenancy; and a claim for loss of quiet enjoyment of the rental unit due to the Air BNB tenancy; moving expenses; and rent differential.

With respect to moving expenses, the parties agree that the landlord provided the tenant with the equivalent of 2 months' rent. A landlord is only required to compensate

the tenant with 1 month of rent, and that is deemed to be moving expenses. Therefore, the tenant's claims for expenses incurred for moving cannot succeed.

With respect to rent differential, there is nothing in the tenancy agreement fixing the tenancy for 24 months even if the previous or new landlord had promised that verbally. I dismiss that portion of the tenant's claim.

With respect to the landlord's obligation to move into the rental unit within a reasonable time after the end of the tenancy, it is clear that the tenancy ended on July 31, 2019 and neither the landlord, nor any family member of the landlord or the corporation has ever moved in. Counsel for the landlord submitted that extenuating circumstances existed that prevented the landlord from moving into the rental unit. The tenant vacated earlier than the effective date of the notice to end the tenancy, and the landlord's agent testified that the landlord had originally planned to move into the rental unit at the beginning of October, 2019 and only needed a small unit. However, she later testified that her parents need 2 basement suites for living and storage. The notice to end the tenancy is dated July 5, 2019 so the effective date of vacancy could not be earlier according to the law than September 30, 2019. However, the parties agree that an earlier date was negotiated for the end of July. I see no reason that the landlord would not have moved into the rental unit in August, prior to family illnesses overseas, and pre-COVID-19.

The landlord's agent also testified that upon returning from China on October 30, 2019, her father was very sad and tired and decided to not move in until Christmas break, then in January had to return to China, returning to Canada on January 29, 2020. He returned to China again in March, 2020 for work returning in July, 2020 being unable to get an earlier flight in May as he had planned due to COVID-19.

Given that it is now August, 2020 and the landlord also issued a notice to end the tenancy of the other basement suite, I am not satisfied that the landlord had any intention of moving into the rental unit. I see no reason that the landlord could not have moved into the rental unit in August, 2019 or on November 1, 2019. I find that the tenant has established a monetary claim of 12 times the monthly rent, or \$13,200.00.

With respect to the tenant's claim for loss of quiet enjoyment, the Air BNB tenancy agreement commenced on January 1, 2019 and the witness testified that the business was suspended from May 10 till September. The tenant vacated the rental unit at the end of July, 2019 which makes just over 4 months of the Air BNB (January 1 to May 10). There is no doubt that there were noise complaints, garbage complaints and loss of quiet enjoyment of the rental unit.

The tenant has not provided any guidance on a monetary claim for loss of quiet enjoyment, and I find that a nominal amount of \$100.00 per month is justified, or \$400.00.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$13,700.00.

This order is final and binding and may be enforced.

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 14, 2020

Residential Tenancy Branch