



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on August 20, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51; and,
- recovery of the filing fee.

The Landlord and the Tenant both attended the hearing. The Landlord confirmed receipt of the Tenant's application and first two packages of evidence, which were sent by registered mail. The Tenant submitted digital evidence via USB to the Landlord on August 14, 2020, and another more evidence on August 17, 2020. As stated in the hearing, the rules of procedure specify that, as an applicant, your evidence must be received by the other party no later than 14 days before the hearing. As these last two packages were significantly late, they are not admissible.

The Landlord stated she served her evidence on a USB stick. The Tenant confirmed she received it on August 11, 2020. The Landlord stated that they checked with the Tenant that she was able to open the evidence, and out of an abundance of caution, the Landlord printed all the documents, including screenshots of videos and photos. The Tenant stated she was having computer issues, but stated she was able to open some of the files, and she also confirmed that she received the full printed package the Landlord delivered on August 12, 2020. I find the Landlord sufficiently served the Tenant with her evidence for the purposes of this hearing.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

Both parties agree that monthly rent was \$1,200.00 per month. The Tenant stated she received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on September 1, 2019. The Tenant provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- 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 stated she feels the Notice was not issued in good faith, and she believes the Landlord never moved in, as they promised. The Tenant stated that she moved out at the end of November 2019, and moved very close by, which enabled her to keep an eye on the property. The Tenant stated that she went by multiple times per day, for a period of months, and never saw much, if any activity. The Tenant stated that she looked inside the trash cans, and never saw any garbage, and even looked in the windows of the house. The Tenant stated that she never saw the Landlord living there. The Tenant provided a photo she took in May 2020, through the mail slot. The Tenant acknowledges that she attended the house and walked around the property in order to obtain photos and evidence.

The Tenant stated that the rental unit is a small house, with a basement. She explained that there have been multiple floods (5 or more) in the past 3 years. The Tenant stated that most of the issues were in the basement where the mould was visible. The Tenant stated that towards the end of the tenancy, a mould company came to assess the issue, but nothing was completed (remediation) while she was living there. The Tenant stated that she was trying to get the Landlord to clean up the flood for quite some time. The

Tenant feels the Landlord couldn't have moved in with all that mould, and this is further evidence the Landlord never actually lived there.

The daughter of the Landlord was the only one who spoke at the hearing for the Landlord, due to language issues. The daughter of the Landlord (the "daughter") stated that she moved in on December 15, 2019, about 15 days after the Tenant left. The daughter stated that she is a student at SFU, and although she isn't currently in classes, she was leading up to the end of 2019, and early 2020. The daughter stated that her father and Landlord issued the Notice so that she could have a place to stay while she attended SFU, nearby. Her plan was to study criminology at SFU while living at the rental house.

The daughter explained that she was previously living in Vancouver, which is 1.5 hours by bus to SFU, whereas this rental property was only a 10 minute bus ride to school. The daughter explained that she moved in in December 2019, and did a bit of painting, but only moved a few limited items into the house. The daughter stated that she never really had much in the way of living room furniture or kitchen items, as she did not cook much, and didn't own much. The daughter stated that she moved in her bed, and basics tables, lamps etc towards the end of December, and lived there until mid-March, when everything changed because of COVID-19.

The daughter provided signed letters from around 8 friends supporting that she did in fact move into the property in December 2019. A couple of these letters state that the friends helped her move some of her things into the house. Some of the letters spoke to the daughter hosting gatherings, and having social events at the house. The daughter also provided copies of her utility bills, which are in her father's name, for December 2019 onwards. The daughter points out that she had gas, electricity, and internet all connected so she could live there. Copies of all these bills were provided for the relevant periods.

The daughter stated that she was living in the house until the Province declared a state of emergency in March, due to COVID-19. The daughter explained that her parents are older and needed help given the broad restrictions on transportation, shopping, work, and school. The daughter stated that, prior to COVID, she was living in this house, relying mostly on bus to get around, but after the emergency was declared, bus routes shut down, or became less frequent and less reliable. The daughter also stated that her parents were fearful to leave their house, and it became very challenging to keep groceries in their house, and keep the family fed, supplied with the essentials, and healthy. The daughter stated that she had to move back to the family home due to all

the COVID restrictions. The daughter stated that after March 15, 2020, she moved back home in order to help her parents, and also to assist her with all the limitations on day-to-day life.

The daughter stated that COVID was an extenuating circumstance which completely uprooted her plans to live alone at the new house and forced her into a situation where she had to move home, keep her social circle smaller, and help her family out. The daughter stated she feared the restrictions would get worse, so she wanted to be at home to support the people that matter most to her. The daughter mentioned that after the state of emergency was imposed, schools went virtual, and she was asked to work from home, which made it even easier to live out of her parent's main house. It made little to no sense for her to stay living in this new house, alone, given the escalating nature of the pandemic.

The daughter pointed out that the Tenant has trespassed so many times that she no longer has any interest in going back to live there. The daughter noted that she has video footage of the Tenant trespassing many days in a row, in an aggressive manner.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenant is seeking 12 month's compensation, pursuant to section 51 of the Act, (12 x \$1,200.00) because the Landlord did not use the rental unit in the manner they indicated on the Notice that was issued.

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

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.

(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.*

I note the Tenant does not believe the house was ever occupied by the Landlord's daughter. The Tenant believes the house was not safe to live in because of all the mould from years worth of flooding. Although I accept there may have been some mould issues, it appears much of the mould was in the basement, and wasn't necessarily in bedrooms or primary living spaces. I find there is insufficient evidence to show that the house was not habitable, or that the Landlord's daughter could not have lived in there based on this issue. Much of the evidence regarding mould was not admissible. The daughter stated that the mould was not as bad as the Tenant has said, and claimed that she painted the necessary areas, and moved in anyways.

I accept that the Tenant has provided photos of an empty garbage can and states that the garbage can never had any garbage in it the times she checked. In response to this, the Landlord's daughter stated that she didn't cook much, and ate out, so there wasn't much garbage to dispose of. I also acknowledge that the Tenant provided a photo she took through the mail slot in May 2020, which show very little furniture in the living room. However, I note this is after the daughter claims she moved back home, and the daughter indicated she never had much in the way of living room furniture.

I acknowledge that these versions of events contrast each other. I also acknowledge that the Landlord's daughter has provided around 8 different signed letters from friends stating they either helped her move in, or that they attended social gatherings while she was living in the house from December till March 2020. I note the daughter also provided internet, electricity and gas bills. Ultimately, when weighing these two versions of events, I find the Landlord's daughter has provided a more detailed and compelling version of events. I find I prefer the Landlord's daughter's evidence on this matter and I have placed more weight on it. I find it more likely than not that the Landlord's daughter

moved into the property for December, until sometime in early to mid-March, which is when the provincial state of emergency was declared for COVID-19.

That being said, I note that section 51(2)(b) states that the rental unit must be used for the stated purpose for at least 6 months, which did not happen in this case. Ultimately, the Landlord failed to meet the requirements set out under section 51 of the Act.

This typically entitles the Tenant to compensation. However, the issue now becomes whether or not the Landlord has sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenant compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

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*

I have considered the Landlord's daughter's explanation regarding why she had to move out of the rental unit, prior to living there for a minimum of 6 months. I accept that COVID-19, and the subsequent Provincial State of Emergency that was imposed substantially altered life for nearly everyone. I accept that there have been severe restrictions on shopping, being in public, interacting with others, travelling, working, and going to school. I find this issue is largely beyond anyone's control and has far reaching implications. I find it is reasonable, after the state of emergency was declared in March

2020, to seriously reassess living arrangements, and how best to support family members, and how to stay healthy amidst increasing restrictions on basic life tasks. I find this situation is extenuating such that it would have substantially contributed to the Landlord's inability to accomplish the stated purpose for a period of at least 6 months. Pursuant to section 51(3), I excuse the Landlord from having to pay 12 months compensation for breaching section 51(2).

I dismiss the Tenant's application, in full, without leave.

Conclusion

I dismiss the Tenant's application in full, without leave.

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 20, 2020

Residential Tenancy Branch