



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via email on May 6, 2020 and the submitted documentary evidence via Canada Post Registered Mail on August 10, 2020. Both parties also confirmed the landlord served the tenant with his submitted documentary evidence in person on August 24, 2020. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on March 1, 2016 on a fixed term tenancy ending on February 28, 2017 as per the submitted copy of the signed tenancy agreement dated February 4, 2016. The monthly rent began at \$1,800.00 payable on the 1st day of each month. Both parties agreed that at the end of tenancy the monthly rent was \$1,919.00. A security deposit of \$900.00 and a pet damage deposit of \$900.00 were paid.

The tenant seeks a monetary claim of \$23,028.00 which is equal to 12 months of rent at \$1,919.00 per month. The tenants seek compensation under section 51 of the Act where the landlord is required to compensate the tenant an amount equal to 12 months rent payable under the tenancy agreement if the landlord:

- *has not taken steps to accomplish the stated purpose for ending the tenancy within a reason time after the effective date of the Notice to End Tenancy, or*
- *has not used the rental unit for the stated purpose for at least six months beginning within a reasonable period after the effective end of tenancy date of the notice.*

Both parties confirmed that the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property on December 31, 2019. Neither party provided a copy of the 2 Month Notice. Both parties confirmed that the reason for cause selected was:

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 spouse).

The tenant claims that the landlord did not occupy the rental unit and did not move in. The landlord disputed this claim stating that he did move in on February 14, 2020 and occupied the unit for a period of approximately 2 months before moving out on April 14, 2020. The landlord stated that because of a change in circumstances with his partner, he listed the unit for sale on April 14, 2020 and moved out on the same day. The landlord stated that the unit sold in mid-May 2020. The tenant argued that the landlord has provided fraudulent evidence and that the landlord's brother had moved-in instead of him and paid the landlord rent. The tenant stated that a recorded telephone conversation with the landlord's realtor (a transcript of the recording was provided) in which the realtor stated,

Mr. R.

Right, and why is the seller selling, do you know?

Mr. B.

*Yeah. So this was his first condo he bought when it was new, pre-sale. He lived in it for a number of years, loved it, but then he upgraded to a two bedroom, but was able to keep this a rental. So then he rented it out for the last two years. Then he, yeah, he bought in the same area, but just at 180 Keefer Street. Then his relationship, he got into a relationship, and they're moving toward the direction of selling each of their properties and then buying together, either a larger condo still, or maybe even a small house or something. So this is just the first one to go, and it was because the last tenant left a couple of months ago. **Then he had his brother moving here from Berlin, and the brother stayed there, but then now the brother just moved out.** So he thought, well, I guess it might be tricky to find a tenant right now during COVID and stuff, so maybe now's the time to list it. Because prices have remained stable through this period so far, it didn't seem like a bad idea. Our traffic has been quite good.*

Mr. R.

Right. Okay. Okay, so you're saying he's in a relationship, they're selling, they're moving into a bigger place. Fine, that makes sense, and his brother was staying there, but...from, you said Berlin. What, did he go back to Berlin or something?

Mr. B.

Yeah, the brother lived in Berlin for 10 years or something. And then, I don't know what the reason, but moved back to Vancouver. May it was just, he was ready for a change. So then, moved into this place because the longterm tenant had moved out. So Taylor had said, "Okay, well, you can stay at my place and pay me rent for as long as you need." But then the brother ended up only staying there for a couple of months and then moved somewhere else. Actually somewhere here, but, I mean, I guess he got a place of his own.

[reproduced with emphasis]

The tenant also referred to 3 submitted photographs of a person moving out of the rental unit on April 14, 2020. The tenant was not able to identify who the person was that was moving.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51 of the Act states in part that a tenant who receives a notice under section 49 is entitled to receive from the landlord on or before the effective date of the notice an amount that is equal to one months rent payable under the tenancy agreement. It also states under 51 (2) Subject to (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 equal to 12 times the monthly rent payable if

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

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.

I accept the undisputed affirmed evidence of both parties that the landlord served the tenant with the 2 months notice for landlord's use on December 31, 2019. The landlord stated that he moved into the unit on February 14, 2020 and moved out on April 14, 2020, approximately a 2 month period. The landlord confirmed that he first listed the rental for sale on April 14, 2020 and sold the unit in mid-May 2020. Although the tenant has argued that the landlord did not move-in, the landlord has confirmed that he lived in the unit for only a period of approximately 2 months. The tenant has failed to provide sufficient evidence that the landlord did not in fact move-in. In this case, it is clear that the landlord failed to use the rental for the stated purpose for at least a 6 month duration as it was sold.

Section 51 (3) states that the director may excuse the landlord if in the director's opinion, extenuating circumstances prevented the landlord from,

Accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

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.

In this case the landlord has stated that circumstances changed with his partner which resulted in the landlord selling the rental property. I find that this is supported by the tenant's transcript of a recorded conversation with the landlord's realtor.

Residential Tenancy Branch Policy Guideline #50, Compensation for Ending a Tenancy, E. Extenuating Circumstances states in part,

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.*

The definition of "extenuating" is tending to lessen the real or apparent seriousness of something (such as a crime, offense, or fault): providing a partial justification or excuse for something.

It is clear that circumstances changed for the landlord, however, I find that they are not extenuating circumstances. I find in this case that the landlord chose to sell the property within a very short time after giving notice to the tenant. The tenant is entitled to compensation under section 51 of the Act. The tenant's application for \$23,028.00 is granted.

I also find as the tenant has been successful that she is entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$23, 128.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: September 03, 2020

Residential Tenancy Branch