



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, 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 each of the landlords with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 8, 2020. Both parties also confirmed the landlords served the tenant with their submitted documentary evidence in person. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

At the outset, the tenant's witness, Z.M. attended the hearing via conference call and stated that she was calling in to respond to the summons issued for her attendance. Z.M. stated that she was at work, recovering from a car accident, did not wish to argue with anyone and did not wish to participate. The witness was notified that she was not attending to argue with anyone but to be a witness and off clarify concerning her signed statement provided by the landlords. The witness, Z.M. repeated that she was at work and was recovering from a car accident. The witness, Z.M. then disconnected from the conference call hearing without further comment at 1:35pm.

Counsel for the tenant argued that as the witness, Z.M. is in contravention of the issued summons and made a request to exclude the landlord's witness statement of Z.M. The

landlords were given an opportunity to respond to the tenant's request to exclude the witness statement. The landlords stated that they dispute the request and repeated that the witness does not have anything to do with this dispute and had only provided a signed witness statement. The landlords repeatedly stated that the witness, Z.M. was working and did not wish to take time off from work and was recovering from a car accident.

I find that the landlords have failed to provide a sufficient reason for the witness, Z.M.'s witness statement from being excluded. The landlords wish to benefit from the submitted statement but have not provided any reasonable explanation of why. I also find that the witness, Z.M.'s explanation of why she does not wish to participate as a witness to be without merit. The witness, Z.M. stated that she was recovering from a car accident yet was at work. The witness, Z.M. is in contravention of the issued summons. I grant the tenant's request and order that the witness, Z.M.'s witness statement be excluded from consideration in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for 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.

The tenant claims that at end of the tenancy the monthly rent was \$1,237.60 payable on the 1st day of each month. A security deposit of \$575.00 was paid. Both parties agreed that the tenancy ended on December 31, 2018 after the landlord obtained an order of possession to enforce the landlord's notice to end tenancy for landlord's use of property.

The tenant seeks a monetary claim of \$14,951.20 which consists of:

\$14,851.20	Compensation, Sec. 51, \$1,237.60/month X 12 month(s)
\$100.00	Filing Fee

The tenant provided written details which states,

The Landlords violated s.51(2) of the RTA. The tenant was served a notice to end tenancy for landlord use of property on August 16, 2018 for the following reason: The rental unit will be occupied by the landlord's close family member. The Landlords stated that the Landlord's daughter, Z.J.M., would be moving into the unit. The Tenant has evidence that Ms. M. never occupied the unit and it remained vacant up to July 2019 when it was advertised on craigslist for \$1800.

Both parties confirmed that the tenancy ended as a result of an order of possession being granted to enforce a notice to end tenancy issued for landlords use of property on December 31, 2018.

The tenant provided submissions that the landlords' daughter, Z.M. did not occupy the rental unit

The tenant referred to a signed witness statement dated August 6, 2019 by R.B. which states in part,

...Within a month or two of them taking over, which I believe was December of 2017, they began carrying out illegal renovations in the vacant basement apartments. I called the City of Vancouver to see if they had permits for this work and learned they do not. They were trying to renovate and create more basement suites which as not permitted. Someone from the City of Vancouver came and shut down the renovations.

The new owners were also coming in to my apartment unannounced. They also tried to raise my rent to approximately \$1,740.00, which would have been a raise of about 38%. I was told "if you don't want to pay, you can leave; you have no lease with us." I did have a signed rental agreement with P., the previous onsite Manager.

...On March 10th of 2018, R.T. and A.M. said to me that I had no leave and had to leave within 20 days or I could pay the \$1740.00 and stay. Becuase I had a rental agreement before they took over with P., I decided to get help from the Residential Tenancy Board, I also needed help because this amount was not the standard allowable rent increase...

The tenant stated that she found an advertisement on an online platform on July 17, 2019 for the rental unit for rent. The tenant submitted a copy of the advertisement. The tenant stated that she confirmed the location based upon the advertisement pictures of the rental unit and had a friend call the advertisement to confirm that it was the same

location. The tenant referenced a witness statement dated April 25, 2020 by R.M-D that was submitted. It states in part,

I am friend with J.L. I have visited J. a few times at the apartment on... before her eviction. In mid July 2019 (the 10th of July, early in the evening if I am not mistaken), I visited the suite after J.'s eviction. As I recall, the person making the visit with the landlord and his name was Alan. The suite was open for rent and Alan gave me necessary documents to apply for a lease agreement at the end of the visit. I am certain the suite I visiter was the one where J. used to live.

The tenant also referenced a typed witness statement dated August 17, 2020 from R.L. submitted by the landlords. It states in part,

It has been requested that I clarify a couple of points of my statement/interview taken by J.'s lawyer's representative.

#1 If the place wasn't for sale after the current landlords took possession, then my apologies, I through that it was, but that could be my confusion of at what point Allan became an owner and not part of the interim team.

#2 Nobody physically lived in the apartment directly below me for several months after J. moved out.

After the dust has settled, two years into my tenancy, I am happy with my relationships with our landlords. They seem to take pride and care with their selection of renter's and as a result all the tenants usually get along quite well. Repairs are done with a smile, which is appreciated. They encourage all of us to participate with our bark yard vegetable gardens an they have been welcome participants at our full household backyard barbecues. If an apartment came empty here, I would be comfortable recommending them as landlords to prospective tenants.

The tenant argues that R.L. has not recanted his written statement, only clarified it. The tenant stated that the original statement provides more details and should be relied upon as none of those issues were contradicted by the statement.

The landlords dispute the tenant's monetary claim arguing that at no time has the landlords not been acting in good faith. The landlords repeatedly stated that there was no tenancy agreement and that no security deposit was paid.

The landlords stated that Z.M. took possession of the rental unit immediately upon the tenant vacating the rental unit. However, Z.M. informed her father, A.M. that it would require repairs and some upgrades before she could move in. The landlords stated that a ceiling water leak, washroom plumbing, kitchen faucets and a broken window were repaired. The landlords stated that Z.M. was notified that she could move in immediately after this. The landlords stated that Z.M. gave notice to cancel her hydro account on her previous property on March 1, 2019 to open her new account for the rental unit. The landlords stated that on June 1, 2019, the landlords were notified that Z.M. can't live in the rental unit by herself. The landlords explained that Z.M. and her long time boyfriend were to originally move in together, but that their relationship was now over in March 2019. The landlords stated that because of this they understood that there were extenuating circumstances and were now able to re-rent the unit. The landlords confirmed that they advertised the unit for rent on July 5, 2019 which was re-rented for August 1, 2019.

The tenant also argued that the landlords have not provided sufficient evidence of any extenuating circumstances.

Analysis

In this case, the tenant seeks a monetary claim of \$14,951.20 pursuant to section 51(2) which is 12 months of rent (at \$1,237.60 per month) and recovery of the \$100.00 filing fee.

Section 51 of the Act states in part that a tenant who receives a notice to end tenancy under section 49 is entitled to receive from the landlord an amount equal to 12 times the monthly rent payable under the tenancy agreement 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 the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, both parties confirmed the tenancy ended as a result of an order of possession being granted to enforce a notice to end tenancy for landlord's use on December 31, 2018. Both parties confirmed that Z.M. the intended tenant (A.M.'s daughter) would be moving into the rental unit. The tenants argued that Z.M. did not occupy the rental unit. The landlords argued that she did take possession of the rental unit. The tenants provided affirmed evidence and witness statements that until July 2019 no one was occupying the rental unit. The landlords argued that Z.M. wanted

upgrades/renovations to the unit before moving in. The landlords referenced a submitted copy of a notice to hydro to discontinue service at her residence to allow her to move into the rental unit. The landlords provided evidence that Z.M. notified the landlords that she could not live in the unit on June 1, 2019. I find on this basis that Z.M. did not take possession by moving in as it is clear that at that time, the renovations had not yet been completed and that Z.M. could not live in the unit as described by the landlord when they were notified on June 1, 2019.

I find that the landlords did not use the rental unit for the stated purpose of the notice as both parties have confirmed that the unit was re-rented beginning on August 1, 2019. I note that although the landlord has not provided any direct evidence regarding extenuating circumstances, I find that the landlords main excuse is that Z.M. was no longer intending to occupy the unit. This is evident in the landlord's initial claim that they were advised by the RTB that this would be an extenuating circumstance since Z.M. could no longer occupy the rental unit and that they could re-rent the unit in the circumstances instead of leaving it empty.

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.*

In this case, the landlords have provided undisputed evidence that the landlords ended the tenancy so that a child of one of the landlords could occupy the rental unit with her partner. The landlords have provided undisputed evidence that the relationship ended

and as a result Z.M. no longer wished to occupy it. The landlords stated that as of the date of this hearing Z.M. is living with her parents. I find this constitutes an unforeseen circumstance and the landlords could not use the rental unit for the stated purpose on the notice. The intended purpose was for the landlord's child, Z.M. to occupy the unit with her partner and that as that relationship has now ended there is no longer that need. On this basis, the tenant's claim is dismissed as I find that the landlords do have extenuating circumstances and that it would be unreasonable and unjust for the landlord to pay compensation.

Conclusion

The tenant's application is dismissed.

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 23, 2020

Residential Tenancy Branch