



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 in response to an Application for Dispute Resolution filed by the Tenant on August 20, 2020 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant appeared at the hearing and called the Witness during the hearing. The Witness was not involved in the hearing until required. I explained the hearing process to the Tenant who did not have questions when asked. The Landlord appeared at the hearing 10 minutes late. The Tenant, Landlord and Witness provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package. The Landlord testified that she did not receive the Tenant’s evidence. The Landlord agreed admissibility of the tenancy agreement was a non-issue.

At first, the Tenant testified that he sent his evidence to the Landlord with the hearing package. The Tenant then testified that the evidence was sent separately by registered mail. The Tenant did not know what date it was sent or the tracking number.

Pursuant to rule 3.14 of the Rules of Procedure (the “Rules”), the Tenant was required to serve his evidence on the Landlord not less than 14 days before the hearing. Pursuant to rule 3.5 of the Rules, the Tenant has the onus to prove service of his evidence. I was not satisfied the Tenant served his evidence on the Landlord in accordance with rule 3.14 of the Rules. I did not find the Tenant’s testimony on this

point compelling given the change in testimony and lack of details. The Landlord testified that she did not receive the evidence. I am not satisfied the Landlord did. I heard the parties on whether the evidence should be admitted or excluded.

The Tenant submitted that the evidence should be admitted because he has a witness who is aware of what is going on in the rental unit.

The Landlord submitted that the evidence should be excluded because evidence should be factual and not from someone who can hear her walking around.

Pursuant to rule 3.17 of the Rules, I exclude the Tenant's evidence, other than the tenancy agreement. I find it would be unfair to the Landlord to consider evidence I am not satisfied the Landlord has had a chance to review. I am not satisfied the Landlord was able to respond to the evidence given I am not satisfied the Landlord received it.

The Tenant testified that he did not receive the Landlord's evidence.

The Landlord testified that she served her evidence on the Tenant by registered mail and provided Tracking Number 1. The Landlord testified that she sent the package to the address on the Notice of Dispute for the Tenant. I looked Tracking Number 1 up on the Canada Post website which shows it was sent November 24, 2020. The website shows a notice card was left November 30, 2020 and final notice left December 05, 2020. I note that the website shows that the Tenant has since picked the package up December 11, 2020, after the hearing.

Pursuant to rule 3.15 of the Rules, the Landlord was required to serve her evidence on the Tenant not less than seven days before the hearing. I am satisfied based on the testimony of the Landlord, Tracking Number 1 and Canada Post website information that the evidence was sent November 24, 2020. I do not accept that the Tenant did not receive a notice card given the Canada Post website shows one was left and the Tenant did not provide compelling evidence that one was not. I am satisfied the evidence was served on the Tenant in accordance with section 88(c) of the *Residential Tenancy Act* (the "Act"). The Tenant cannot avoid service by failing to pick up registered mail packages. The Tenant is deemed to have received the evidence November 29, 2020 pursuant to section 90(a) of the *Act*. I am satisfied the Landlord complied with rule 3.15 of the Rules and her evidence is admitted.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the admissible documentary evidence and all oral testimony of the parties and Witness. I will only refer to the evidence I find relevant in this decision.

I note that the Landlord had to be reminded to make submissions in an appropriate manner given some of the statements the Landlord made during the hearing.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought \$11,650.00 in compensation pursuant to section 51 of the *Act* based on the Landlord failing to follow through with the stated purpose of a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 20, 2020 (the "Notice").

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. Both parties agreed rent was \$1,100.00 at the end of the tenancy.

The parties agreed the Tenant vacated the rental unit June 08, 2020.

The Landlord submitted the Notice. The grounds for the Notice are that the rental unit will be occupied by the Landlord or the Landlord's close family member. The details state that the rental unit will be occupied by the Landlord or Landlord's spouse.

The Tenant made the following relevant submissions. The Landlord told him she was desperate to move back into the rental unit. The Landlord gave him the Notice between March 25 and 30, 2020. It was not legal to give him the Notice. He vacated the rental unit pursuant to the Notice. The Landlord said she was moving into the rental unit. He then found out the Landlord was not at the rental unit. He asked another tenant of the building if anyone was in the rental unit because he noticed nobody was there. The tenant said nobody was there other than a woman who was friends with the Landlord. The rental unit has remained empty except for a short period of time when a friend of the Landlord's was there.

The Tenant said the Notice was not legal because it was served after March 20, 2020.

The Landlord made the following relevant submissions. She issued the Notice because she was relocating. The Notice is dated March 20, 2020. The Notice was a legal notice to end tenancy, it just was not enforceable because of the pandemic. She attended the rental unit to move in and the Tenant was not moving because of his vehicle. She has been living at the rental unit the entire time. It does not matter if she travels. She had to renovate because there was a dog in the rental unit. She had to wait for a bed because the Tenant got rid of or took hers. She had to get plumbing done because of issues. She moved into the rental unit two days after the Tenant moved out and continues to live there.

The Witness provided the following relevant testimony. As far as he can tell, nobody is living in the rental unit. There are no new vehicles in the parking lot. There are people coming and going, but not consistently the same person. He met someone who was staying in the rental unit for a week or two who said they were staying with a friend. He has not seen a moving truck or anyone moving into the rental unit.

In response to questions by the Landlord, the Witness provided the following relevant testimony. He lives in the same building as the Landlord. He can hear the screen door or sliding door in the rental unit. He has never met the Landlord that he is aware of. He has seen a picture of the Landlord. He has seen people coming and going from the rental unit a couple times. He has not seen anyone carry things in or out of the rental unit. It is possible the Landlord moved into the rental unit when he was not there. He is not home all the time. He does not know if the Landlord is there when he is not there. He is not watching for the Landlord's car but knows the owners of the cars parked in the lot and there are no new vehicles.

The Landlord submitted a hydro bill dated October 15, 2020 showing her name and the rental unit address. The Landlord submitted a copy of her driver's license with the rental unit address on it.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) 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 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

(2) Subject to subsection (3), the landlord...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...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.

Policy Guideline 2A states at page two:

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.

Notices to end tenancy were suspended starting March 30, 2020 pursuant to Ministerial Order No. M089. I am not satisfied based on the testimony of the parties or the date of the Notice that the Notice was issued March 30, 2020 or after. Therefore, I am not satisfied the Notice was issued contrary to Ministerial Order No. M089.

Pursuant to rule 6.6. of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof in a dispute resolution hearing is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The parties gave conflicting testimony about whether the Landlord moved into the rental unit once the Tenant vacated.

To support the Tenant's position, I have the testimony of the Tenant and testimony of the Witness. I did not find the testimony of the Tenant that the Landlord did not move in particularly compelling because the Tenant did not provide details about how he is aware of this, other than to refer to his discussion with the Witness. I found the testimony of the Witness compelling. I found the Witness to be straightforward in his testimony. I had no concerns about the reliability or credibility of the Witness. I note in particular that the Witness was willing to acknowledge weaknesses in his own knowledge about the situation when questioned by the Landlord.

To support the Landlord's position, I have the testimony of the Landlord, hydro bill and driver's licence. I acknowledge the limited value of the hydro bill and driver's licence given the date of the bill and absence of a date on the address change on the driver's licence. However, I accept that the hydro bill and driver's licence are some evidence supporting the Landlord's position.

Considering the evidence before me, I find I am left to weigh the testimony of the Witness against the testimony of the Landlord. Although I had concerns about the manner in which the Landlord provided her testimony, there was nothing about the Landlord's testimony that caused me to find it unreliable or not credible.

In weighing the evidence, I am not satisfied it is more likely than not that the Landlord did not move into the rental unit. I find the Landlord is in a better position to know whether she moved into the rental unit than the Witness and this is ultimately the basis for my finding.

In the circumstances, the Tenant has failed to prove the Landlord failed to follow through with the stated purpose of the Notice. Given this, I am not satisfied the Tenant is entitled to compensation pursuant to section 51 of the *Act*.

Given the Tenant was not successful in the Application, I decline to award the Tenant reimbursement for the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 18, 2020

Residential Tenancy Branch