



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes METC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for the landlord's failure to use the rental unit for the purpose contained in a notice to end the tenancy for landlord's use of property; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with an Advocate, gave affirmed testimony, and called 1 witness who gave affirmed testimony. The landlord also attended and gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submission.

The parties agree that evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issues to be Decided

Has the tenant established a monetary claim as against the landlord for failure to use the rental unit for the purpose contained in a notice to end the tenancy for landlord's use of property?

Background and Evidence

The tenant testified that this month-to-month tenancy began on August 1, 2004, initially with the tenant's son's name who moved out and the tenant took over in 2007. Rent in the amount of \$450.00 was originally payable under the tenancy agreement, which was increased over time and was \$610.00 per month at the end of the tenancy, 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 \$225.00 which was returned in full to the tenant at the end of the tenancy, and no pet damage deposit was collected. The rental unit is a single room apartment in a complex containing 17 units, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that on or about February 19, 2020 the tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) by the manager of the rental complex. A copy has been provided for this hearing and it is dated February 14, 2020 and contains an effective date of vacancy of April 31, 2020. The reason for issuing it states: "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 did not underline any portion, and testified that the Notice was served with that underlining.

The tenant rented there for 13 years, never missed a rent payment, did not smoke or have parties or pets, and it seemed unfair to have to move out. The tenant asked the landlord's building manager if the rental unit had been used by any people described in the Notice, and he replied, "No."

The tenant claims 12 times the monthly rent, or \$7,320.00 and recovery of the \$100.00 filing fee.

The tenant's witness testified that he was manager of the apartments, and his duties included all aspects of management, including showing apartments, renting apartments, making lease agreements, and serving notices.

The tenant was a tenant in the complex for a very long time. The landlord asked the witness to give the tenant a notice to end the tenancy, and the witness hand-delivered it to the tenant on February 14, 2020.

Three days before the effective date of vacancy, the landlord contacted the witness asking him to tell the tenant that the Notice was rescinded, and the witness delivered a note to him on his last day of the tenancy, but the tenant told him that he had already made arrangements for other living accommodation.

The witness re-rented to a young man and girlfriend with a baby, and they did not know the landlord at all.

The landlord testified that he bought the rental complex 5 ½ years ago. He worked in Calgary and lived there or in Surrey, and the drive was not that far to the rental complex.

The landlord's children visited with the landlord and stayed in the community a few times. The landlord, or the landlord's daughter were going to occupy the rental unit, but the landlord's daughter decided not to move to the community due to COVID-19 and other reasons, got a promotion, and moved to the lower mainland.

The tenant was a good tenant, and it was the landlord's intention to have his daughter move in but things changed.

New tenants needed a place, and the landlord's daughter said she didn't want to move to the community due to the Pandemic and travelling the highway, so the landlord re-rented effective August 1, 2020 for \$900.00 per month; that was the market rate at the time in the community.

Analysis

The *Residential Tenancy Act* requires a landlord who gives a notice to end a tenancy to a tenant to do so in good faith. Where a landlord does not use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property within a reasonable time after the effective date of the Notice and for at least 6 months duration, the landlord must pay compensation to the tenant equivalent to 12 month's rent payable under the tenancy agreement.

(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.

In this case, the landlord does not dispute that the Notice was given, or the amount of rent payable, or the fact that the rental unit was not used for the purpose contained in the

Notice. Subsection (3) permits me to excuse the landlord from the amount of compensation required if I find that extenuating circumstances exist that prevented the landlord from doing so. The landlord testified that due to COVID-19 and his daughter getting a promotion and changing her mind about living in the rental unit are the reasons for not using the rental unit, but I do not find that to be extenuating circumstances. The landlord re-rented for an increased amount 3 months after the tenancy ended.

I find that the tenant has established the monetary claim of 12 times the monthly rent, or \$7,320.00.

Since the tenant has been 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 \$7,420.00.

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: January 21, 2021

Residential Tenancy Branch