



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MANHATTAN HOLDINGS CO. and
[tenant name suppressed to protect privacy]

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 Tenants on July 12, 2020 (the “Application”). The Tenants applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenants appeared at the hearing with E.A. as a witness. E.A. was not involved in the hearing until required.

Legal Counsel for the Landlord appeared at the hearing with G.L. as well as M.N. and L.Q. as witnesses. M.N. and L.Q. were not involved in the hearing until required.

G.L. was named as the landlord on the Application; however, it was confirmed at the hearing that the Landlord should be named, and this is reflected in the style of cause.

I explained the hearing process to the parties who did not have questions when asked. The parties and witnesses, other than Legal Counsel, provided affirmed testimony.

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

Legal Counsel advised that the Landlord received a letter from Tenant G.H., the Notice of Hearing, a four-page application, a Direct Request Worksheet and two photos including one of the rental unit building and one of an envelope. Further evidence had been submitted by the Tenants. Legal Counsel advised that the Landlord did not receive this further evidence.

Tenant G.H. testified that all evidence was served on L.Q. Tenant G.H also testified that the package was sent to G.L.'s business address but was refused and returned.

L.Q. testified as follows. Tenant G.H. provided L.Q. the hearing package. L.Q. opened the package and it contained the Notice of Hearing. The contents of the page were about four pages double sided. The package did not include the further evidence submitted by the Tenants.

Tenant T.H. testified as follows. They observed Tenant G.H. serve L.Q. They did not help put together the package served on L.Q.

When asked how Tenant T.H. knew what was in the package served on L.Q. if they did not help put it together, Tenant T.H. changed their testimony and said they did help put the package together.

Pursuant to rule 3.5 of the Rules of Procedure (the "Rules"), the Tenants were required to prove service of their evidence on the Landlord. The Tenants and L.Q. gave conflicting testimony about what was served on L.Q. I did not find I could rely on Tenant T.H.'s testimony because Tenant T.H. changed their testimony. Therefore, I had Tenant G.H.'s testimony that all evidence was served and L.Q.'s testimony that not all evidence was served. In the absence of further evidence to support what was served on L.Q., I was not satisfied that all evidence was served on L.Q.

In relation to the package being sent to G.L.'s business address, I was not satisfied this method of service was permitted pursuant to section 88 of the *Residential Tenancy Act* (the "Act") given it was the Landlord who had to be served, not G.L. I was not satisfied the address used was an address at which the Landlord carried on business as a landlord.

I told the parties the above and heard the parties on whether the evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. Legal Counsel submitted that the evidence should be excluded because they do not know what it is. Tenant G.H. reiterated their testimony about service of the evidence.

Pursuant to rule 3.17 of the Rules, I excluded the Tenants' further evidence as I found it would be unfair to the Landlord to consider evidence when I was not satisfied they had seen it or could address it at the hearing.

Tenant G.H. confirmed receipt of the Landlord's evidence and did not take issue with the timing of service.

In summary, I have considered the 13 page PDF submitted by the Tenants December 29, 2020 as this contains the documents Legal Counsel confirmed receipt of. I have also considered the Landlord's evidence.

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

Issues to be Decided

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

Background and Evidence

The Tenants sought compensation equivalent to 12 months of rent 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 (the "Notice").

A written tenancy agreement was submitted, and the parties agreed it is accurate. The parties agreed rent was \$3,390.00 at the end of the tenancy.

There was no issue that the Tenants were served with the Notice November 28, 2018.

The Notice was submitted. It had an effective date of January 31, 2019. The grounds for the Notice were:

The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The parties agreed the tenancy ended January 31, 2019.

Tenant G.H. provided the following testimony and submissions. G.L. did not move into the rental unit within a reasonable amount of time after the effective date of the Notice. G.L. moved into the rental unit temporarily five months after the Notice was issued. There are photos on G.L.'s website which show G.L. was living and fishing in a different country. G.L. did not live in the rental unit for six months. G.L.'s website shows G.L. had to be back in another country in October of 2019. G.L. only spent a maximum of four months in the location of the rental unit. Prior to G.L. moving into the rental unit, G.L. did major renovations to the rental unit. G.L. could not have occupied the rental unit while the major renovations were occurring. Further, G.L. was travelling throughout the province when G.L. was in British Columbia. G.L.'s wife is a realtor in another country. It is inconceivable that G.L.'s wife or family would leave that country to come to Canada.

E.A. testified as follows. E.A. first saw G.L. and his wife at the rental unit building in May of 2019. E.A. saw G.L. and his wife leave the rental unit building in October of 2019 and never saw them again. E.A. would say "hello" to G.L. and his wife in the hallway or lobby of the rental unit building when they were there.

E.A. testified as follows in response to questions from Legal Counsel. E.A. lived in the rental unit building but not on the same floor as G.L. The rental unit building has 10 or 11 floors. There are three entrances to the rental unit building. E.A. was outside a lot because E.A. smoked. E.A.'s tenancy ended in 2020. E.A. now lives down the street from the rental unit building. To this day, the curtains in the rental unit are not closed. E.A. met G.L. and his wife three or four times and saw them 15 to 20 times at the rental unit building.

Legal Counsel made the following submissions. G.L. has occupied the rental unit since the rental unit came into their possession. G.L. is semi-retired and a citizen of another country. G.L. has family in the location of the rental unit. G.L. travels extensively. G.L. is in the process of moving to the location of the rental unit to retire. Minor renovations to the rental unit were completed after G.L. took possession of the rental unit. G.L. lived in the rental unit while the renovations were being done. The Tenants have provided contradictory evidence.

L.Q. testified as follows. E.A.'s tenancy ended November 30, 2020. There are 62 units in the rental unit building. L.Q. was very involved with the rental unit and the renovations and can confirm G.L. and his wife have been at the rental unit the whole time. The renovations in the rental unit included replacing appliances, replacing cabinetry, painting, putting in new flooring and removing a small non-supportive wall.

G.L. and his wife lived in the rental unit during the renovations and were in and out travelling back and forth.

M.N. testified as follows in response to question from Tenant G.H. A washer and dryer were installed in the rental unit after the Tenants vacated. A small wall was removed from the rental unit. The renovations were done in stages.

G.L. testified as follows. G.L. and his wife lived in the rental unit starting the second week of February or earlier. G.L. and his wife never moved out of the rental unit. G.L. and his wife travel a lot. G.L. and his wife left the country in February of 2020, the pandemic hit and G.L. has been stuck in another country since. G.L.'s clothes are in the rental unit. G.L. and his wife are not Canadian citizens. G.L.'s son lives in the location of the rental unit and stays in the rental unit sometimes. G.L. and his wife were at the rental unit for most of the time during the renovations; however, they did travel and stayed somewhere else when certain tasks were being done such as painting.

G.L. testified as follows in response to questions from Tenant G.H. G.L. does not recall when or where he was fishing in February to June of 2019. G.L.'s website is outdated and G.L. does not know what is on the website. G.L. does not post the photos on the website and the photos are outdated. G.L. travels back and forth between the location of the rental unit and another country every month. G.L. recently purchased a house in another country to renovate and sell. G.L. purchased a house in August of 2020. The houses G.L. owns in another country are investment properties.

The admissible relevant documentary evidence from the Tenants includes:

- A letter from Tenant G.H. to G.L. about the Application;
- A one page statement from the Tenants; and
- A photo of the rental unit building.

The admissible relevant documentary evidence from the Landlord includes:

- An Affidavit of L.Q. It states that the rental unit has been occupied by G.L. and his wife exclusively since the Tenants vacated. It also disputes that L.Q. made statements attributed to L.Q. by the Tenants in their materials.
- An Affidavit of M.N. It disputes that M.N. made statements attributed to M.N. by the Tenants in their materials. It states that the rental unit has been occupied by G.L. and his wife exclusively since the Tenants vacated.

- An Affidavit of G.L. It states that the rental unit has been used for G.L. and G.L.'s family to reside in since shortly after the Tenants vacated. It states that G.L.'s furniture and belongings have remained in the rental unit while they travelled.
- Invoices, mail and other documentation addressed to G.L. and/or G.L.'s wife showing the rental unit address as their address.
- Photos of G.L., G.L.'s family and G.L.'s dog in the rental unit.
- Flight documentation for March of 2020 in relation to G.L. returning to Vancouver from out of the country.

Analysis

The Notice was issued pursuant to section 49(4) of the *Act* which states:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, 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...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.

Pursuant to rule 6.6 of the Rules, it is the Tenants as applicants who have the onus to prove they are entitled to the compensation sought. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Policy Guideline 2A states:

C. OCCUPYING THE RENTAL UNIT

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.

Vacant possession

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

6-month occupancy requirement

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

Policy Guideline 50 states:

Taking Steps to Accomplish the Stated Purpose

A step is an action or measure that is taken to accomplish a purpose. What this means depends on the circumstances. For example, if a landlord ended a tenancy to renovate or repair a rental unit, a step to accomplish that purpose might be:

- Hiring a contractor or tradesperson;
- Ordering materials required to complete the renovations or repairs;
- Removing fixtures, cabinets, drywall if necessary for the renovations or repairs.

Evidence showing the landlord has taken these steps might include employment contracts, receipts for materials or photographs showing work underway.

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days.

If a landlord ends a tenancy to renovate or repair a rental unit, then they should start taking steps to renovate or repair the unit immediately after the tenancy ends. However, there may be circumstances that prevent a landlord from doing so. For example, there may be a shortage of materials or labour resulting in construction delays.

Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months. A landlord cannot end a tenancy for renovations or repairs and then perform cosmetic repairs, or other minor repairs that could have been completed during the tenancy. This is because section 49 clearly establishes that a tenancy can only be ended for renovations or repairs that are:

- so extensive that the rental unit must be vacant in order for them to be carried out, and
- the only manner to achieve that vacancy is by ending the tenancy.

If the landlord performs cosmetic repairs, the landlord has not accomplished the purpose for ending the tenancy.

The parties disagree about whether G.L. occupied the rental unit within a reasonable period after the effective date of the Notice and whether G.L. occupied the rental unit for at least six months' duration.

The evidence before me to support the Tenants' position is the written statements and verbal testimony of Tenant G.H., one photo of the rental unit building and the verbal testimony of E.A.

The evidence before me to support the Landlord's position is the verbal testimony and Affidavits of G.L., L.Q., and M.N. Further, G.L. submitted documentation to support their testimony including documentation addressed to G.L. and/or G.L.'s wife at the rental unit and photos.

Given the evidence before me, I am not satisfied the Landlord failed to follow through with the stated purpose of the Notice for the following reasons.

I find the evidence provided by the Landlord outweighs the evidence provided by the Tenants. Based on the evidence provided by the Landlord, I am satisfied it is more

likely than not that G.L. and his wife moved into the rental unit in February of 2019 and have used the rental unit for a residential purpose since.

I do not accept the statements of Tenant G.H. about what other individuals said or observed for two reasons. First, there is a discrepancy in the dates of observations made by E.A. between the statement of Tenant G.H. and the testimony of E.A. Second, Tenant G.H. attributes statements to L.Q. and M.N. that both deny making. In the circumstances, I do not find Tenant G.H.'s account of what others said or observed reliable in the absence of further evidence about these points.

I do not find one photo of the rental unit building to be compelling evidence of whether G.L. moved into the rental unit in February of 2019 or remained there for six months.

I am satisfied based on the evidence of G.L. that G.L. and his wife travel a lot. I am satisfied this explains why G.L. and his wife were not at the rental unit every day from February of 2019 to present. I do not accept that the *Act* requires G.L. to have been at the rental unit every day, or even most days, from February of 2019 to present. The *Act* required G.L. to use the rental unit for a residential purpose and I am satisfied based on the evidence provided that G.L. has done so. G.L. is not precluded from travelling and therefore being away from the rental unit.

The parties disagreed about whether major or minor renovations were done after the Tenants vacated. There is no issue that renovations were done. I am satisfied based on the evidence of L.Q., M.N. and G.L. that the renovations were as outlined by L.Q., M.N. and G.L. I am satisfied based on the evidence of L.Q., M.N. and G.L. that G.L. and his wife lived in the rental unit while the renovations were occurring. I am not satisfied based on the evidence provided that the renovations were more extensive or that G.L. and his wife could not have lived in the rental unit while the renovations were occurring. I also accept that G.L. and his wife travelled during this time and, at times, stayed somewhere else. Again, this is permitted. G.L. and his wife were not required to be in the rental unit every day for six months.

I do not accept the submission of Tenant G.H. that it is "inconceivable" that G.L. or his wife would relocate to the location of the rental unit. I find this to be an assumption of Tenant G.H.'s based on Tenant G.H.'s own view versus on some reliable or credible factual foundation.

I am not satisfied E.A. would know whether G.L. and his wife used the rental unit for a residential purpose from February of 2019 to present given the following. The size of

the rental unit building. The fact that E.A. did not live on the same floor as G.L. The unlikelihood that E.A. would know the comings and goings of residents of the rental unit building which has 11 floors, 62 units and three entrances. I place more weight on the evidence of L.Q., M.N. and G.L. as I find these individuals are in a better position to know whether G.L. used the rental unit for a residential purpose. In relation to L.Q. and M.N., I find they are in a better position to know whether G.L. used the rental unit for a residential purpose given their connection to the rental unit building and relationship with G.L.

I do not find the evidence that G.L. owns other homes to be compelling evidence to support the Tenants' position. G.L. testified that the other homes are investment properties and I do not find this unlikely or unbelievable.

Given the evidence before me, I am satisfied G.L. used the rental unit for a residential purpose from February of 2019 for at least six months. What has occurred since is not relevant.

I am satisfied that using the rental unit for a residential purpose in February of 2019 when the effective date of the Notice was January 31, 2019 is "within a reasonable period of time". I find moving into the rental unit within one month is a short period of time. I also accept that it took some time for G.L. to relocate from another country as this accords with common sense.

In the circumstances, I am not satisfied based on the evidence provided that the Landlord failed to follow through with the stated purpose of the Notice. Therefore, I am not satisfied the Tenants are entitled to compensation pursuant to section 51 of the *Act*.

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: February 10, 2021

Residential Tenancy Branch