



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The tenant's agent (agent) and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. The agent said he was representing his father as he was seriously ill and because he was familiar with the facts in the case.

The parties confirmed receiving the other's documentary and digital evidence in advance of the hearing.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord and recovery of the filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on February 1, 2019, and ended on July 31, 2020. The monthly rent at the beginning and end of the tenancy was \$2,500. Filed into evidence was a copy of the written tenancy agreement.

The tenant said that they vacated the rental unit in response to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice).

This Notice was signed and issued by the landlord, was dated January 27, 2020, served to the tenant that date, and listed an effective move-out date of March 31, 2020. Filed into evidence was a copy of the Notice.

As a reason for ending the tenancy, the Notice listed that the rental unit will be occupied by the landlord or the landlord's close family member.

The tenants submitted further that they chose to accept that the tenancy was ending due to the Notice; however, due to the ongoing Covid-19 pandemic, the parties mutually agreed to extend the tenancy to July 31, 2020. The tenants chose the monthly rent for July 2020, to use as compensation for having received the Notice from the landlord.

In support of their application, the tenant said they were informed by neighbours that new tenants had moved into their former rental unit after they vacated.

The tenants filed a copy of a Craigslist advertisement showing the home was listed for rent of \$3,200 in monthly rent and that it was posted on August 20, 2020. The advertisement stated that the house was "vacant and available immediately".

The tenants' filed a video of the agent knocking on the front door to the rental unit, in which another man opened the front door. The video also shows the landlord standing off to the side telling the man "don't say anything".

Additional evidence filed by the tenants is an envelope sent to the landlord at the rental unit address on October 14, 2020, which was returned, marked "Moved Unknown".

The tenants submitted that they are entitled to compensation equivalent to 12 months' rent, as the landlord has not used the rental unit for the stated purpose listed on the Notice, in the amount of \$30,000.

Landlords' response-

The landlord submitted that he has re-rented the rental unit, but that he occupies a side room and garage and is living there. The landlord confirmed that there are three separate sets of tenants in the home and that the total monthly rent he collects from them is \$4,100.

The landlord submitted a written statement in response to the tenants' application. The landlord wrote that he did not allow an extension of the tenancy and that he suffered a great loss in not being able to move back into the home. The landlord wrote he abandoned his return.

The landlord wrote the written tenancy agreement shows his clear intention to move back to the house, as it was a 1 year, fixed term agreement and the tenants violated the fixed term agreement.

The landlord spoke of the tenants running an illegal store without permission and receiving complaints from neighbours. and submitted photos.

The landlord submitted that he has no other place to live in British Columbia and that he is paying "mortgages" on the house as well as still feeding a family of four boys and a girl. In response to my inquiry, the landlord confirmed that his children live in a very large city in another province far from the rental unit and are all adults.

The landlord submitted that the automobile proof of insurance document he submitted proves that he lives in the rental unit. The insurance effective date listed on the document is February 28, 2020. This tenancy began on February 1, 2019 and ended on July 31, 2020.

The landlord's additional evidence contained photographs of the outside of the rental unit during the tenancy, written complaints from neighbours about the tenants and two typed, duplicate statements from neighbours.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In this instance, the tenant is required to prove their claim, on a balance of probabilities.

In the case before me, the undisputed evidence shows that the tenant was issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act. In this case, the Notice listed that the rental unit will be occupied by the landlord or the landlord's close family member.

Therefore, the landlord or close family member must occupy the rental unit for six months starting within a reasonable amount of time after the tenancy ended to fulfill the purpose stated on the 2 Month Notice that was served upon the tenant.

Section 51(2) provides that 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 if 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, the tenant is entitled to compensation equivalent of 12 months' rent under the tenancy agreement.

Residential Tenancy Branch (RTB) Policy Guideline 2A states that the implication of the word "occupy" means to "occupy for a residential purpose". This Policy Guideline goes on to explain that a landlord can end the tenancy if they, or close family member intend in good faith to use the rental unit as living accommodation or as part of their living space.

Living space is in a case of a landlord renting out a rental suite in their house under a tenancy agreement, for instance, a basement suite, and they intend to reclaim it as a part of their living accommodation. That is not the case here.

Having reviewed and considered the parties' respective oral, documentary and digital evidence, I find the tenant has met their burden of proof.

The evidence is overwhelming that the landlord has not used the rental unit for the stated purpose, for the following reasons. I note the following from the evidence submitted prior to and at the hearing.

1. The tenant supplied video evidence showing another tenant opening the rental unit door and the landlord off to the side, instructing that tenant to “not say anything”.
2. The undisputed evidence is that the rental unit was listed for rent on Craigslist on August 20, 2020, shortly after the tenancy ended, for a monthly rent for \$700 more than the tenants were paying and that another tenant(s) currently live there.
3. The tenant sent the landlord a large envelope containing the hearing documents on October 2020, to the rental unit address, which was returned, marked “moved” and “unknown”.
4. The landlord said he abandoned his move back, but did not specify what his claimed loss was or why he abandoned, as he asserted at the hearing that he has taken over the garage and an unspecified side room.
5. Although the landlord claimed that the fixed term tenancy agreement shows his intention to move in, I find it does not. The tenancy agreement states that the tenancy continued on a month-to-month basis after the fixed term.
6. The majority of the landlord’s evidence depicts alleged complaints from neighbours about the tenants running a business from the home and photographs proving the tenants ran a business from the home. I find this along with the large increase in the monthly rent paid by the next tenant supports on a balance of probabilities that the landlord had other, improper reasons for ending the tenancy.
7. While the landlord submitted that he was feeding his five children, who live in a large city in another province far from the rental unit, the landlord confirmed these children are all adults. I find this evidence is misleading and self-serving. Further the landlord supplied no evidence that this was true.
8. Although the insurance effective date listed on the document supplied by the landlord was February 28, 2020, the tenancy here began on February 1, 2019 and ended on July 31, 2020. As the landlord clearly did not live in the rental unit on February 28, 2020, I find it more likely than not the landlord was not truthful with the automobile insurer as to his actual address. Further, the landlord had no other proof, such as a driver’s licence, health care card, or utility bills to show that his address was at the rental unit.
9. The two typed statements signed by the landlord’s neighbours attesting to the landlord residing at the home were the exact one sentence statements, with the same words misspelled. I find it more likely than not the landlord prepared this statement and asked his neighbours to sign. I do not find this is an accurate reflection of the real living situation and was self-serving.

For all these reasons, I therefore find the landlord is not using and has not used the rental unit for the stated purpose listed on the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. I also find the evidence supports that the parties agreed to extend the effective date of the Notice to July 31, 2020. I find support for this finding by the tenant electing to use the month of July 2020, as the month's monetary compensation entitled to for receiving the Notice in the first place.

I therefore find the tenant is entitled to monetary compensation equivalent to 12 months' rent, due to the landlord's breach of the Act.

I find merit with the tenant's application and award them recovery of their filing fee of \$100, pursuant to section 72(1) of the Act.

As a result, I find the tenant has established a monetary claim of \$30,100, the equivalent of monthly rent of \$2,500 for 12 months, or \$30,000, and the cost of the filing fee of \$100.

Conclusion

The tenant's application has been granted in full and they are provided a monetary order in the amount of \$30,100.

Should the landlord fail to pay the tenant this amount without delay, the tenant must serve the landlord the order to be enforceable. The landlord is **cautioned** that costs of such enforcement are recoverable from the landlord.

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: February 3, 2021

Residential Tenancy Branch