



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT/FFT

Introduction

On October 29, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting monetary compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord, the Landlord’s agent, the Tenant and the Tenant’s advocate attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Issues to be Decided

Should the Tenant receive compensation, in accordance with section 51(2) of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on May 1, 2011 and continued as a month-to-month tenancy. By the end of the tenancy, the rent was \$2,274.00 and due on the first of each month. The Landlord collected and returned a security deposit in the amount of

\$1,000.00. The Tenant moved out of the rental unit on November 26, 2019 as a result of the Landlord serving her a Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 11, 2019 (the "Two Month Notice").

Both parties agreed on the following:

- The Landlord served the Tenant the Two Month Notice and indicated that the tenancy was to end as he was going to move his mother into the larger residential property (of which the rental unit is a part).
- The residential property contained two rental units with a total of 5 bedrooms and 2 kitchens.
- The Landlord ended both the Tenant's tenancy and the tenancy of the second unit for the same reasons; being the Landlord's use of property.
- The Landlord did not move his mother into the rental unit for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.
- The Landlord sold the rental unit (the residential property) in March 2020.

The Landlord testified that they completed "extensive renovations" and during the winter holidays in December 2019, began moving some of his mother's belongings into the rental unit.

The Landlord stated that his mother is elderly and although she wanted to live in a large house on her own so she could entertain and have family stay over, she began to suffer from anxiety. The Landlord stated that his mother stayed in the rental unit(s) for one or two nights a week in January 2020.

The Landlord submitted that his mother's anxiety worsened in February 2020 and her health was beginning to deteriorate, so they decided to hold off from moving her into the rental unit(s).

The Landlord submitted one page of a hydro bill for the period between February 13 to April 2, 2020 to demonstrate that the utilities had been placed in his mother's name. The bill indicated an average daily use of electricity as 66 cents.

The Landlord stated that by February 2020, the family decided to sell the residential property (the rental unit being a part of the larger residential property) as well as their principal residence so they could buy a larger home to accommodate his mother. The residential property containing the rental unit sold in March 2020.

The Landlord submitted a note from his mother's doctor, dated January 26, 2021, with the doctor's recommendation for the mother to live with her family instead of by herself "given the multiple complex medical conditions from which she has been suffering with exacerbations recently over the past few months."

The Landlord testified that he had honest intentions to move his mother into the rental unit, however, the extenuating circumstances of his mother's deteriorating health prevented him from doing so.

The Landlord's agent testified that he believed the Landlord intended on moving his mother into the rental unit and that the onset of COVID-19 has exacerbated a lot of issues for people.

The Tenant (and her advocate) testified that she was evicted from her rental unit on November 30, 2019 for the Landlord's use of property, yet the Landlord never moved his mother into the rental unit and sold the residential property on March 23, 2020.

The Tenant questioned the Landlord's intention to move his mother into the rental unit and made the following submissions:

- All of the tenants were evicted from two different rental units (same residential property) to accommodate a single elderly lady. The Tenant asked why an elderly lady would choose to live in a large house with five bedrooms and two kitchens by herself?
- The Landlord submitted a hydro bill that showed no usage.
- The Landlord did not provide any evidence that the mother moved into the house and only included one picture of an empty house, other than a couch.
- The medical letter refers to the timeframe of the mother's condition one year after the eviction.
- The Landlord has not provided any supporting evidence for the deterioration of his mother's health during the time that she was supposed to move into the rental unit(s).

The Tenant submitted that the Landlord failed to take the steps to accomplish the stated purpose for ending the tenancy and has not proven that there were extenuating circumstances.

Analysis

Section 51(2) of the Act directs the landlord, who gives a tenant notice to end the tenancy under Section 49 of the Act, to pay the tenant an amount that is the equivalent of twelve 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 that stated purpose for at least six months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, I find that the Landlord has failed to provide sufficient evidence to demonstrate that he accomplished the stated purpose for ending the tenancy; that the rental unit will be occupied by the Landlord's close family member (parent). Although the Landlord stated that his mother lived in the rental unit for a couple of days for a few weeks in January, I find that the Landlord's evidence of a hydro bill dated after the fact, and one picture of the rental unit that showed a couch, provides little to tip the balance of probabilities in the Landlord's favour.

Furthermore, by the Landlord's own admissions, I find that the Landlord did not use the rental unit for the stated purpose of moving a close family member in for at least six months' duration, beginning within a reasonable period after the effective date of the notice, in accordance with section 49 of the Act.

Before granting the Tenant compensation for the above breach by the Landlord, I have to consider Section 51(3) of the Act which states that an arbitrator may excuse the landlord if, in the arbitrator's opinion, extenuating circumstances prevented the landlord from accomplishing the stated purpose for ending the tenancy, or 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.

Residential Tenancy Policy Guideline 50 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing one's mind or failing to adequately budget to be examples of circumstances that would likely not be considered extenuating.

I accept that the changing health of an elderly parent can affect the plans a family might have for their parent's placement and subsequent care. In this case the onus is on the Landlord to prove, on a balance of probabilities, that there were extenuating circumstances that prevented the Landlord from accomplishing the purpose that ended the tenancy.

The Landlord testified that his mother became anxious about moving into the rental unit in December 2019 and January 2020, soon after the Tenant moved out. The Landlord stated that his mother's health deteriorated in February 2020; therefore, his mother did not move into the rental unit(s). The Landlord submitted an opinion from his mother's doctor that recommended the Landlord's mother live with family instead of living by herself given her medical condition over the "past few months". I find that this opinion covered a timeframe between November 2020 and January 26, 2021 and does not address the mother's health during the time that she was supposed to occupy the rental unit; for a minimum of six months beginning within a reasonable period after the effective date of the notice. As a result, I find that the Landlord failed to provide sufficient evidence that his mother's deteriorating health, from December 2019 to June 2020, prevented her from occupying the rental unit.

The Landlord stated that attempts were made to move his mother into the rental unit in January 2020 and that he changed the billing for the utilities into his mother's name. I note the Landlord provided a hydro bill for February 2020, instead of providing utility bills for January 2020, when he stated his mother temporarily lived in the rental unit. I find that the one-page hydro bill for February- April 2020 does not demonstrate that the Landlord's mother occupied the rental unit at any time, nor does it support that the Landlord intended on moving his mother into the rental unit, especially as the Landlord testified that in February 2020, he made the decision to sell the residential property.

The Landlord has claimed that he attempted to permanently move his mother into the rental unit in January 2020; however, her anxiousness and deteriorating health were the extenuating factors that prevented him from doing so. Upon review of the Landlord's testimony and evidence, I find that the Landlord failed to provide sufficient evidence that his mother ever moved into the rental unit and further, that her deteriorating health prevented her from doing so on a more permanent basis.

As a result, I find the Landlord failed to demonstrate the reasons he cited that prevented him from accomplishing the stated purpose for ending the tenancy and using the rental unit for that stated purpose for at least 6 months' duration were extenuating circumstances.

As such, I find that the Tenant has successfully established a monetary claim pursuant to section 51(2) of the Act. Therefore, I find that the Landlord owes the Tenant the amount equal to 12 months' rent payable under the former Tenancy Agreement; for a total of \$27,288.00 (12 x \$2,274.00).

I find that the Tenant's Application has merit and that the Tenant is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

Additional Matter

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order.

Accordingly, towards the end of the hearing, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, a Decision was made by myself (the Arbitrator).

Conclusion

I grant the Tenant a Monetary Order for the amount of \$27,388.00, in accordance with section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 10, 2021

Residential Tenancy Branch