



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

Landlord MR (the landlord) and KR and the tenant attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Is the tenant entitled to:

1. A monetary order in an amount equivalent to twelve times the monthly rent?
2. An authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on October 31, 2019 and ended on January 31, 2020. Monthly rent was \$1,200.00, due on the first day of the month. The landlords returned the security deposit of \$600.00 and the pet damage deposit of \$200.00 to the tenant. The tenancy agreement was submitted into evidence.

Both parties also agreed a Two Month Notice to End Tenancy for Landlord's Use (the Notice) was served on November 20, 20219. It states that the rental unit will be occupied by the landlord's close family member and the effective date was January 31, 2020. The landlord's mother intended to occupy the rental unit.

The tenant is claiming for compensation in the amount of \$14,400.00 (12 months of monthly rent payment of \$1,200.00) because the landlord's mother did not move in and occupy the rental unit for six months.

The landlord stated his father died on November 08, 2019, his mother cannot live alone because of her deteriorating health and the rental unit is the ideal place for his mother to live with a caretaker. In the last week of February 2020 the landlord's mother moved to the rental unit from another province. The landlord affirmed it was not possible for his mother to move before the last week of February 2020. In the first week of March 2020 the landlord's mother returned to the province of her prior residence to have a medical exam to renew her driver's license and left her belongings in the rental unit.

The March 11, 2020 letter from the Ministry of Transportation of another province, mailed to the landlord's mother's address outside British Columbia (B.C.), indicates the landlord's mother had a medical exam booked for April 23, 2020. A second document dated March 26, 2020 confirming the same medical appointment was submitted into evidence. The landlord explained his mother owned property in the province of her prior residence until March 2020.

The tenant inquired why an 80 year-old person needs to renew her driver's license in another province if she is planning to live in B.C. and how is this person capable of renewing the driver's license if she needs to live with a caretaker.

The landlord testified his mother would only have medical coverage in B.C. six months after she moves to this province. For this reason, she decided to renew her driver's license in the province of her prior residence and plans to obtain her B.C. driver's license after she gets medical coverage in this province.

The landlord said there were other medical appointments booked for his mother before the April 23, 2020 exam. These appointments were booked by telephone, so there is no written confirmation. The landlord's mother's doctor recommended that she does not travel back to B.C. because of her age, the pandemic risk and because her health has deteriorated since March 2020. The tenant states he does not believe the landlord's mother's health has deteriorated, as no document was submitted by the landlords to prove this situation.

The landlord stated the live-in caretaker hired to help the landlord's mother moved to the rental unit on May 01, 2020, has been occupying it since that date and has been paying rent since July 01, 2020. When the landlord's mother returns to the rental unit the caretaker will not pay rent and will receive a salary.

The tenant affirmed on May 03, 2020 he visited the next-door neighbour and observed a couple with three children occupying the rental unit. The landlord explained the caretaker's former husband was visiting the rental unit with the three children.

The landlord testified in January 2021 his mother moved to a long-term care home in her prior residence province and will move back to B.C. when her doctor authorizes her to travel. The tenant said he does not believe the landlord's mother cannot travel, as no document was submitted by the landlords to prove this.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Sections 49(2) and (3) of the Act state:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(b)for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

- (i)not earlier than 4 months after the date the tenant receives the notice,
- (ii)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(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(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

Section 51(3) states the landlord may be excused from paying the tenant the amount required by section 51(2) if 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.

Residential Tenancy Branch Policy Guideline 50 states:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- ☐ A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.

☐ A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

☐ A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

☐ A landlord ends a tenancy to occupy a rental unit and they change their mind.

☐ A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

(emphasis added)

The commonality of the examples outlined in the guideline for extenuating circumstances is that the event was outside the control of the landlord, whereas the examples of a non-extenuating circumstance include the common element of a landlord having decision-making authority or control over the event.

The summary of the landlord's testimony regarding extenuating circumstances that did not allow his mother to occupy the rental unit for six months is:

- The 80-year-old landlord's mother moved to the rental unit from another province in the last week of February 2020 and returned to the province of her prior residence in the first week of March 2020 to renew her driver's license;
- After the landlord's mother traveled to the province of her prior residence her health deteriorated and she moved to a long-term care facility;
- On May 01, 2020 a caretaker hired to help the landlord's mother moved to the rental unit and has been paying rent since July 01, 2020.

The tenant disputed the landlord's testimony and the landlord did not provide documentary evidence to prove his mother's health has deteriorated since the first week of March 2020 or that she cannot travel. The landlord's testimony was vague and did not provide details about the landlord's mother's health condition.

Furthermore, it is not credible that an 80-year-old person is renewing her driver's license in the province of her prior residence when she needs to live in a long-term care home. The March 11 and 26, 2020 letters do not prove the landlord's mother's health has deteriorated, as they only indicate the landlord's mother had a medical exam on April 23, 2020. The landlord also acknowledged the caretaker has been paying rent since July 01, 2020.

Based on the testimony of both parties, I find the landlords failed to prove, on a balance of probabilities, that extenuating circumstances did not allow the landlord's mother to

move to the rental unit and occupy it from February 01 to July 31, 2020, the six-month period after the Notice's effective date.

As such, per section 51(2) of the Act, the tenant is entitled to a monetary award in the amount of 12 times the monthly rent payable. Thus, I award the tenant a monetary award in the amount of \$14,400.00 (12 x \$1,200.00).

As the tenant was successful, I authorize the tenant to recover the filing fee in the amount of \$100.00.

In summary, the tenant is entitled to a monetary award in the amount of \$14,500.00.

Conclusion

Pursuant to sections 51(2) and 72 of the Act, I grant the tenant a monetary award in the amount of \$14,500.00.

The tenant is provided with this order in the above terms and the landlords must be served with this order. Should the landlords fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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: April 12, 2021

Residential Tenancy Branch