Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

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

- Compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice); and
- recovery of the filing fee.

The tenant, the landlord and the landlord's agent attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receipt of the other's evidence.

Thereafter all participants 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.

I was provided a considerable amount of evidence, including testimony and documentation, all of which I have considered in making this decision; however, with a view to brevity in writing this decision I have only summarized the parties' respective positions and referenced the most relevant of evidence I have relied upon.

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

Preliminary and Procedural Matters-

Limitation amount –

The tenant's monetary claim was $60,000. While the tenant did not provide a detailed breakdown of their claim, I was able to determine that $46,800 of this claim related to the request for monetary compensation equivalent to 12 months rent under the tenancy agreement, by way of section 51(2) of the Act.

The tenant was informed that the monetary limit for claims under the Act is $35,000, with the sole exception of claims made under section 51(2), as is the case here.

What this means is that I would be permitted to hear the claim of $46,800, but would not be legally able to hear any claim in excess of $46,800. The tenant was provided the option of withdrawing his application in order to take the entire matter to the Supreme Court of British Columbia, or to proceed on the claim of $46,800, only.

The tenant chose to continue on the claim of $46,800 and the tenant was informed that the balance of his claim, would be dismissed. Under Rule 2.9, an applicant may not divide a claim. Therefore, any claim above $46,800 is **dismissed without leave to reapply**.

Recording of hearing –

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Issue(s) to be Decided

Is the tenant entitled to compensation for the landlord ending the tenancy and not using the property for the intended purpose and to recover the cost of the filing fee?

Background and Evidence

The tenancy began on January 6, 2016, ended on October 31, 2020, and the monthly rent at the end of the tenancy was $3,900. Filed into evidence was a copy of the written tenancy agreement.

The tenant submitted that they vacated the rental unit on October 31, 2020, by the terms of the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice). The tenant submitted a copy of the Notice.

This Notice was issued by the landlord, dated August 11, 2020, and listed an effective move-out date of October 31, 2020. Filed into evidence was a copy of the Notice.

As a reason for ending the tenancy, the Notice listed that the landlord or the landlord's spouse will be occupying the rental unit.

In support of their application, the tenant said they requested the landlord give them an extension of time in which to vacate, due to having to travel in from another country, with the associated risks of flying during the pandemic. The tenant submitted that he had to cancel his work commitments to fly in, that he had to pay a moving company and quickly find a new place.

The landlord's agent, according to the tenant, said the landlord could not agree to an extension, as the landlord intended on moving in on October 31, 2020.

The tenant submitted that during an online search, he noticed that the rental unit was listed for rent and that as of December 14, 2020, the rental unit was still empty. Filed into evidence was a screenshot of the online advertisement.

The tenant submitted that they are entitled to compensation equivalent to 12 months' rent, in the amount of $46,800, as the landlord has not fulfilled the stated purpose listed on the Notice.

Landlords' response-

The landlord, through their agent/ daughter, submitted they had no knowledge that the rental unit was being listed for rent by the property management company formerly handling the rental unit. The landlord claimed the first time they had knowledge of the rental listing was receipt of the application package from the tenant.

The landlord submitted that the property management company had no authorization or permission to list the property for rent. The landlord submitted that they ceased using the services of the property management company when the tenancy ended.

The landlord submitted that they decided to end the tenancy due to the sale of their primary residence. Filed into evidence was a copy of that purchase and sale contract.

The landlord submitted that they did not move into the property immediately after the tenants vacated as they wanted to do some renovations, which was necessary after the five year tenancy of the tenants.

The landlord submitted that they moved into the rental unit on January 21, 2021, which was a “lucky” date in accordance with cultural traditions. The landlord submitted that the rental unit is their only residence. Included in the evidence was a copy of a 3-year contract in the landlord’s wife’s name for security services and a contract for a cable company, both using the rental unit address.

The landlord submitted a letter from the property management company, confirming that the listing of the rental unit for rent was done without their knowledge or consent.

The landlord submitted that it is extremely unlikely that a leading property management company would be unaware of the legal requirements and the consequences of evicting a tenant based upon the Notice, if the landlord did not truly intend to occupy the rental unit. Further, the landlord submitted that the advertisement listing submitted by the tenant shows it was updated on October 6, 2020, when the tenants still resided in the rental unit, which further calls into question the credibility of the listing on the one website.

The landlord submitted that they have and continue to live in the home in question, since January 21, 2021.

Landlord's witness –

The landlord's witness, the managing broker for the property management company, submitted they stopped representing the landlord when the Notice was issued to the tenants. The witness said that he was not familiar with the website the tenant referred to in their evidence, and they advertise their properties only on other specific websites named at the hearing.

The witness submitted the listing was created by a back-end system in another part of the country, and this system triggered an unauthorized advertisement. The landlord submitted they made contacts with the back-end system to have the advertisement removed.

Filed into evidence were copies of the emails between the property management company and the back-end system, querying why this listing was published and how to remove it.

In response to my inquiry, the tenant confirmed that he had not seen any other listings on any other websites showing the rental unit being advertised.

Analysis

After reviewing the relevant evidence, I provide the following findings.

In this case, the tenant has the burden of proof to substantiate their claim on a balance of probabilities.

The undisputed evidence shows that the tenants were issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49(3) of the Act. In this case, the Notice listed that the landlord or spouse will occupy the rental unit.

Therefore, the landlord 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 Two Month Notice that was served upon the tenants.

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.

In this case, while there was some disagreement as to the exact date the landlord moved into the rental unit, there was no dispute that the landlord has moved into the residential property at least by February 2021.

I find the landlord provided sufficient and compelling evidence that they moved into the rental unit on January 21, 2021, as the date was specific as to its cultural importance. Absent evidence to the contrary from the applicant, who has the burden of proof, I accept that the landlords began occupying the rental unit on January 21, 2021.

The question remains at to whether this date was within a reasonable time after the effective date of the Notice.

In this case, I find it reasonable that the landlord preferred to make renovations to the home prior to moving in and find they had the right to do so. I also accept that the appliances ordered by the landlord were not delivered until December 2020, which delayed their move-in.

I find nothing in the Act prohibits an owner from making renovations at their own pace prior to moving back into their home.

I further accept that the landlord never authorized or intended to have the rental unit be advertised. I find the landlord's witness, his former agent, provided a reasonable explanation and submitted compelling and consistent oral and documentary evidence that they were unaware a third party software company gathered information about the rental unit and put an advertisement on a website unfamiliar to the landlord's witness.

I find it reasonable to conclude that a property management company would make use of many different internet platforms when marketing a property for rent, yet in this case, there was no proof that they had done so.

It was clear to me from the 3-year security services contract and their 2-year television, phone, and internet package contract that the landlords have made the former rental unit their primary and only residence.

For all these reasons, I find the tenant has submitted insufficient evidence to support their application for monetary compensation.

As a result, I dismiss the tenant's application for monetary compensation and for recovery of their filing fee, without leave to reapply.

Conclusion

For the above reasons, I have dismissed the tenant's application, including their request to recover the filing fee.

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 30, 2021

Residential Tenancy Branch