Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was reconvened from two adjourned hearings in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. It is noted that the proceedings occurred over three hearing dates for a total of 228 hours and the following sets out and considers the relevant testimony and arguments provided by the Parties over the three hearing dates.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?
Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy started in 2002. On May 29, 2018 the Landlord gave the Tenant a two-month notice to end tenancy for landlord's use (the "Notice"). The effective date of the Notice is stated to be July 31, 2018. The reason stated on the Notice is that the Landlord or a close family member of the Landlord intends in good faith to occupy the unit. The Tenant did not dispute the Notice and moved out of the unit on July 31, 2018. During the last year of the tenancy rent of

$943.00 was payable on the first day of each month. The Parties have dealt with the security and pet deposit.

The Tenant states that their unit is one of four units in total. The Tenant states that the tenancy relationship was cordial until 2015 when its relationship with the Landlord became strained due to a lack of repairs. The Tenant states that it had repair concerns with hot water for the period December 2015 to February 2016 although the Tenant did not seek an order for repairs. The Tenant states that they also had fridge problems leading to spoiled food in November 2017 and mailbox lock issues from December 2014 and although the Landlord was informed the problem was not resolved until February 2018. The Tenant states that this evidence is relevant to the Landlord's good faith intention and that the problems led to the issuance of the Notice. The Tenant states that the Landlord lived in one of the units for 10 years.

The Tenant states that it was not planning to move out of the unit until after it received the Notice without warning and then stopped working to look and pack for another residence. The Tenant states that as there was only time to find a new place and as it would have taken too much time to compile evidence to dispute the Notice the Tenant did not dispute the Notice. The Tenant states that Witness FG and other friends were informed by the Tenant of the tenancy being ended. The Tenant states that after move-out there was no return to the unit and that the Tenant's belief that the Landlord did not move into the unit came from the Tenant's Witness FG.

Witness FG states that:

- between February 2012 and November 2019, it resided in unit #1 directly across from the Tenant and had the same Landlord as the Tenant;
- it had a good relationship with the Landlord and met the Landlord's three children and the Landlord's partner/spouse;
- the Landlord also resided at the property in unit #4 for some period of time from the onset of the Witness's tenancy;

- the Landlord moved out of unit #4 at some point prior to July 2018, maybe March 2018, that the Landlord's children also lived in this unit alone for some period of time and that renovations were done to this unit between March and May 2018;
- the Tenant informed them of having received the Notice and observed that the Tenant experienced stress in finding another rental unit that was animal friendly affecting the Tenant's work and health;
- after the Tenant moved out of the unit the Witness observed renovations to the unit for about 2 or three weeks in September to early October 2018 and that with the doors to the unit open during this time no furniture or personal items were seen in the unit;
- after the renovations the unit was quiet with nobody coming and going and no lights on in the evenings;
- in January 2019 the Witness saw a person, a man, who was not a child of the Landlord, believed to be occupying the unit as the Witness saw this person around the property and coming and going into the unit between January and October 2019;
- in October 2019 this man informed the Witness that he was residing in the unit;
- in November 2019 the Landlord ended the Witness's tenancy with a two-month notice to end tenancy for landlord's use, informing the Witness initially that the Landlord's mother would move into the unit and later that the Landlord's son would move into the unit;
- the Witness was informed that the persons who moved into unit 1 was the Landlord's son and wife;
- the Witness was not happy about having its tenancy ended as the Witness did not like the way it was informed of the end but that this did not affect its feelings one was or another about the Landlord;
- there are no photos of the renovations at the time they were occurring as the Witness was not aware of any reason to do so;
- the Tenant was told of the person residing in the Tenant's unit after the Witness had been evicted; and

- the Witness is providing evidence on behalf of the Tenant as the Witness has become more aware of the issues around ending the tenancy due to its own tenancy end and because the Witness believes in justice.

The Tenant's Witness PH states that:

- it knew Witness FG and that it was at Witness FG's unit several times a week;
- in September and or October 2018 it saw the renovations being done to the unit for a period of 2 or 3 weeks; and
- a person who was not a family member of the Landlord moved into the unit around January 2019.

The Tenant clarifies that although the monetary order worksheet submitted by the Tenant sets out amounts that exceed the limit of $35,000.00, these amounts have been changed to total $32,592.56. Of this amount the Tenant claims as follows:

1. For breach of good faith intention to occupy the unit pursuant to section 49(3) and section 7(1) of the Act:
    - $17,486.56 for loss of employment income;
    - $240.00 in relation to health;
    - $1,550.00 for the cost of furniture storage;
    - $2,000.00 for loss of enjoyment of the unit; and
2. For the Landlord's breach in not occupying the unit pursuant to section 51(a) and (b) of the Act:
    - $11,316.00 for 12 months rent equivalent.

Both Parties provided written submissions in relation to these claims.

The Landlord states that it lived in unit 4 since 2007 and that in 2017 it purchased a farm out of province. The Landlord states it lived at both this unit and the farm until March 2018 when rented unit 4 and moved to the farm.

The Landlord states that the decision to return to the building was made in May 2018. The Landlord states that the Tenant's unit was chosen because of its size, its location on the main floor, its easy access for purposes of managing the rental building, its beauty, it's in suite laundry, it would meet the Landlord's needs, and it was close to its aging parents. The Landlord states that unit 7 was not considered. The Landlord states that it resided at the farm with its spouse until the move into the unit. The Landlord states that on June 30, 2018 the Landlord experienced a traumatic family event that also affected the Landlord's relationship with its spouse. The Landlord provides a copy of a news report in relation to this event.

The Landlord states that it started to move into the unit on August 3, 2018 and that many people helped with this move. The Landlord provides witness letters in relation to both the move-in and occupancy of the unit. The Landlord states that it only brought in enough belongings and furnishings to be able to reside in the unit. The Landlord states that it continued to reside at the unit as the Landlord needed its own place for its own trauma recovery but went back and forth to the farm to help her spouse carry out farm obligations and to work on their relationship. The Landlord states that her spouse was experiencing depression along with difficulties with its own aging parent. The Landlord states that the unit was rented to another tenant ("ME") who was given access to the unit on March 23, 2019. The Landlord provides a Witness letter from ME who sets out that the unit was viewed in January 2019 and then rented for the March 2019 occupancy by ME. This letter also notes that the unit appeared to be lived in at the time of the viewing with furniture and clothing present.

The Landlord states that it made only cosmetic improvements to the unit in February and March 2019 while residing in the unit. The Landlord states that no renovations were done to the unit in August, September or October 2018. The Landlord states that her and her spouse were also swapping their time and rotating the work at the farm.

The Landlord states that it moved all of its furniture out of unit 4 to the farm at the end of March 2018. The Landlord states that it did not intend the farm to be its primary residence. The Landlord states that in hindsight it should have kept residing in unit 4 as it turned out that it needed its own space. The Landlord states that it went between the farm and the unit and provides a timeline of its locations. The Landlord states that the timeline may not be accurate due to the trauma that was occurring at the time.

The Landlord's Witness states that it is the common law spouse of the Landlord and has been living with the Landlord since 2011. The Witness states that the Landlord took turns with the Witness working on the farm when the Witness was visiting its parents or working in Vancouver for an organization. The Witness states that it was sometimes at the farm while the Landlord was there and would sometimes stay with the Landlord in unit 2. The Witness states that it also stayed with family on the island. The Witness states that the timeline of their whereabouts was prepared two years after the fact, was taken from information stored on its computer's memory, and that they only had a few days to prepare this evidence. The Witness states that the timeline is an accurate record to the best of the Witness's ability. The Witness states that the Landlord moved back to the farm about the second half of March 2019.

The Witness states that the Landlord moved some of its furniture to the farm in 2017 and that they had furniture together that they considered their joint furniture. The Witness states that it has no recall of having moved any of that furniture off the farm. The Witness states that the Landlord had other furniture in storage. The Witness states that it is not sure where the Landlord stayed between the end of March 2018 and its stay at the farm on April 5, 2018. The Witness states that it never observed any construction work done on the unit but did note a new backsplash was in place in February 2019. The Witness states that the Landlord had the unit sparsely furnished while it was occupying the unit.

The Landlord argues that ongoing the farm obligations and the trauma leading up to the move into the unit in August 2018 are also extenuating circumstances that prevented the Landlord from occupying the unit on a full-time basis.

The Tenant argues that the Landlord did not occupy the unit as its primary residence. The Tenant states that at the time of the move-out inspection the Landlord set out its address for service from the farm. The Tenant argues that the fall 2018 utility bills provided by the Landlord as evidence show low usage that supports a finding that the unit was not occupied by the Landlord. The Tenant argues that the evidence of its furniture being at the farm supports that the unit was not occupied full time as the Landlord's residence.

The Tenant argues that the "stated purpose" under section 51(2) of the Act includes "the requirement that intention to occupy the unit be in good faith". The Tenant provides copies of other Decisions dealing with good faith occupation and I note that these Decisions are from disputes of the notice to end tenancy for landlord's use and not in relation to claims for compensation after the tenancy has ended. The Tenant argues that occupancy cannot be found where the unit is only occupied part time and provides a copy of a Decision dated October 12, 2017. The Tenant also argues that the occupation must be as a primary residence and provides a copy of a Decision dated September 8, 2011. The Landlord makes opposing argument and provides copies of other Decisions along with BC Supreme Court Decisions.

Analysis

Section 51(2) of the Act provides that subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice 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
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> (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) of the Act provides that the director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, 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.

Although the Tenant gives supported Witness evidence that renovations to the unit occurred in September and October 2018, given the Landlord's evidence of increased hydro usage from middle November 2018 to January 2019 with lower readings in September and October 2018 I prefer the Landlord's evidence and find on a balance of probabilities that no renovations were being done in September and October 2018. While the Tenant argues that the low hydro usage in September and October 2018 supports a finding of no occupancy, the Tenatn provided no baseline hydro usage evidence for similarly situated residences. Further I consider that a low usage would be consistent with the Landlord's evidence of less than full time occupation. The Tenant's evidence of not having seen furnishings in the unit between September and October 2018 comes from a sight line through a doorway. Given this limited view of the unit and the Landlord's evidence of sparse furnishings, I consider that the Tenant's Witness evidence of not seeing personal belongings or furnishings to be of little persuasion.

Given the Landlord's supported evidence of the movement of furnishings into the unit in August and September 2018 I find on a balance of probabilities that the Landlord did have furnishings in the unit as early as August 2018.

Although the Tenant gives witness evidence from a tenant that the Landlord was not seen or heard coming and going from the unit between August and November 2018, given the Landlord's evidence from the other two tenants of hearing and observing the Landlord going to and from the unit and residing in the unit, I find on a balance of probabilities that the Landlord did reside in the unit during this time. In making this finding I also consider that given the Landlord's undisputed evidence of traumatic events leading up to August 2018 and the Landlord's evidence of experiencing ongoing trauma during this period to be consistent with the evidence of only having the son and his girlfriend over. In these circumstances it would be reasonable for the unit to be fairly quiet, therefore reducing visibility or sound to the Tenant's Witness from its location across the unit. Given the Landlord's evidence from the prospective tenant ME that saw the unit in January 2019 as being furnished and having personal items, and ME's evidence that it rented the unit for March 2019, I find on a balance of probabilities that the Landlord occupied the unit as a residence for at least 6 months.

Although the Landlord may not have occupied the unit as a full time or primary residence, there is no policy or other language in the Act that leads me to interpret the Act as requiring full-time or primary residency, particularly where the landlord owns and occupies more than one property for different purposes. The cases provided by the Tenant in relation to part-time or primary occupancy can be distinguished from the case at hand. The Decision dealing with the occupation of a rental unit as a primary residence by the Landlord sets out no facts that suggest the unit was being used as a secondary residence only that it was not occupied at all. I therefore am unable to conclude that the use of the term "primary residence" is derived from a similar fact situation where the Landlord owns and occupies two residences. The Decision dealing with part-time occupation arises from a finding that since the Landlord rented the unit

out part-time, there could not be a finding of occupation during the rental period. The current case does not deal with any evidence that the unit could not be occupied by the Landlord due to some other action that would stop the occupation. For the above reasons, I dismiss the Tenant's claim for compensation equivalent to 12 months rent.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 49(3)(a) of the Act provides that 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 49(8) of the Act provides that a tenant may dispute a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice. The intention for ending the tenancy for landlord's use must include the good faith consideration and where a landlord is shown not to have a good faith intention the remedy is to cancel the notice to end tenancy and to continue the tenancy.

It is undisputed that the Tenant did not challenge the Landlord's good faith intention to occupy the unit by disputing the Notice within the time required. The Tenant accepted the end of the tenancy and moved out of the unit. With that I would consider that the Tenant cannot now seek retroactive and different remedy. The Tenant may only seek remedy for the failure of the Landlord to occupy the unit which is a compensation amount based on a predetermined formula. There is no opportunity under the Act to seek additional compensation or damages for the same failure. Given the finding that the Landlord occupied the unit, whether or not it had a good faith intention at the time the Notice was given, I find that the Tenant has not substantiated that the Landlord breached any other section of the Act by not occupying the unit. For the above reasons I dismiss the claim for compensation for loss of employment income, health issues, furniture storage and loss of enjoyment of the unit. As none of the Tenant's claims have met with success, I decline to award recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety.

Conclusion

The application is dismissed.

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: April 26, 2021

Residential Tenancy Branch