Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with the tenant's application pursuant to the Act for:

- Compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to sections 51 and 67; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenant and both of the landlords attended the hearing. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application. Each party was advised that recording of the hearing was prohibited and both parties provided oaths to tell the truth at the commencement of the hearing.

Issue(s) to be Decided
Did the landlord use the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice?

Background and Evidence
At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The tenant had lived in the rental unit since November 2018 and the landlords purchased the unit with the tenant already occupying it. Each year, the tenancy was renewed with the landlords, the most recent tenancy commencing February 1, 2020, scheduled to end on January 31, 2021. Rent was $1,676.00 per month at the end of the tenancy.

On July 29, 2020, the landlord served the tenant with a Two Month's Notice to End Tenancy for Landlord's Use with an effective (move-out) date of August 31, 2020. The tenant acknowledges receiving the notice by email on July 29th, although the notice is dated June 30th. A copy of the notice was provided as evidence. The notice states that the rental unit will be occupied by the landlord or the landlord's spouse.

After receiving the notice, the tenant found another rental unit in the same building and vacated the landlord's unit by August 31st. The tenant testified that he was compensated with August's rent free of charge for being served with the landlord's notice.

The tenant testified that when he received the notice, he assumed the landlord was going to move in. After moving out, the tenant noticed mail and packages addressed to people other than the landlord or his spouse directed to the rental unit commencing November 1st. The tenant referred me to the landlord's evidence package where the landlords admit to renting out the unit subsequent to serving the tenant with the notice to end tenancy. The tenant submits that the landlord failed to use the rental unit for the purpose of occupying it (as stated on the notice) for at least six months.

The landlords provided the following testimony. They own this rental unit in the interior of the province and another one in Victoria. When they served the tenant with the notice to end tenancy, they were living overseas. Due to the Covid-19 pandemic, they felt it would be best to return to Canada, choosing the tenant's unit to occupy since it was close to friends and family. The landlords moved into the unit in late September and made some repairs to it throughout October. While staying in the rental unit, the landlords discovered some owners in the building were using their units as short-term vacation rentals. They also found that the building too high density for their liking.

Lastly, they determined that there were too many transient people living in the building making them uncomfortable during the pandemic. They had no immediate provincial health insurance, having recently returned to Canada and no coverage should they succumb to Covid-19. One of the landlords has cancer and cardiovascular disease.

The apartment they owned in Victoria became available and they decided it would be best for their health if they were to move there instead. The landlords moved to Victoria and found a tenant to rent out the rental unit in November of 2020 through a business contact.

The landlords submit that their motivation for ending the tenancy with this tenant was not for financial gain but to return to Canada for family and health. The landlords took on costs of $25,000.00 to move here from overseas.

Analysis

Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice

This section of the Act is explored in Residential Tenancy Branch Policy Guideline PG-50 [Compensation for Ending a Tenancy]:

> ***Accomplishing the Purpose/Using the Rental Unit***
> *Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.*
>
> *This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy. A landlord cannot end a tenancy to occupy a rental unit, and then re-rent*

the rental unit to a new tenant without occupying the rental unit for at least 6 months.

…

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.*

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*

In the case before me, the landlords do not dispute the fact that they ended the tenancy with the tenant on August 31st and had another tenant move into the rental unit on November 1, 2020, exactly 3 months later. The landlords admit they did not occupy the unit for 6 months after the tenancy ended. The question is whether the landlords had any extenuating circumstances that stopped the landlords from occupying the rental unit for those 6 months.

First, the landlords served the tenant with the Two Month's Notice to End Tenancy for Landlord's Use with less than two months notice to vacate. Second, the landlords understood they were evicting their tenant from his home before the end of his fixed term tenancy. Lastly, when they served the notice to end tenancy, the landlords used a method that was not recognized under the Act. For any of those reasons, the tenant could have justifiably sought to dispute the notice. He did not do so, choosing to believe the landlord fully intended on occupying the unit after returning from overseas.

The landlords submit that health concerns prompted their move from the rental unit they evicted the tenant from to another one they owned in Victoria. They testified that it was the proximity of family and friends that swayed them to initially choose this unit rather than the one in Victoria when they moved back from overseas.

The landlords submit that they were uncomfortable with the high density of the building where the rental unit was and the number of short-term rentals in the building made them uneasy. I would expect the landlords to have known how many units were in the building and would have investigated whether short-term rentals were allowed in the building before they purchased the rental unit. I am not satisfied these factors were unknown to the landlords or that they didn't take them into account when deciding which of the tenants to evict, the tenant in this case or the one occupying the rental unit in Victoria. Knowing that they were returning to Canada without health insurance during a pandemic, the landlords ought to have considered which of the two rental units they considered safer and wished to occupy before evicting this tenant.

Moreover, while the landlords submit that the building has many short-term rental units, they did not direct my attention to any evidence to support this statement. Nor did the landlords provide any testimony or direct my attention to any evidence respecting how many units are actually in the building. I did not hear any testimony from the landlords regarding how many tenants live in the Victoria rental unit as compared to this one. For these reasons, I find the landlords provided insufficient evidence to merit these justifications for failing to occupy the rental unit for 6 months before vacating it.

I find the landlords simply ended the tenancy with the intent to occupy it but changed their minds after deeming their Victoria rental unit preferable when it became available. I find the landlords did not provide extenuating circumstances which allow me to excuse them from the requirement to occupy the rental unit for a period of at least 6 months. I do not find it unreasonable or unjust to award compensation to the tenant equivalent to 12 months' rent in accordance with section 51(2) of the Act. The tenant is awarded the sum of $20,112.00 in accordance with sections 51 and 67 of the Act. ($1,676.00 x 12 = $20,112.00)

As the tenant's application was successful, the tenant is also entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of $20.212.00.

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: May 06, 2021

Residential Tenancy Branch