



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was primarily represented by counsel. The landlord gave some submissions through a friend who acted as interpreter.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began on February 1, 2020 and ended on January 31, 2021 in accordance with a 2 Month Notice dated September 30, 2020 (the "2 Month Notice"). The monthly rent was \$4,732.00 payable on the first of each month. The rental unit is a single detached 3-bedroom home.

A copy of the 2 Month Notice was submitted into evidence. While the 2 Month Notice does not identify the dispute address the parties testified that they understood it to be effective for the rental unit. The notice provides that the reason for the tenancy to end is that the rental unit will be occupied by the landlord and their spouse. The notice provides an effective date of January 31, 2021. The parties agree that the tenant was given compensation in an amount equivalent to one month's rent pursuant to section 51(1) and the tenancy ended on the effective date of the notice.

The landlord submits that the rental unit required some cleaning, renovations, and work to be done prior to being able to reside in the rental unit. The landlord submits that they hired third party companies to perform some work on the rental unit commencing in February 2021. While work was being done, they began moving some items into the suite as of March 2021. The landlord listed the property for sale on or about April 15, 2021. The landlord testified that they were advised to list the property by their realtor, and they instructed their realtor the sale could close no earlier than May 2022.

The landlord says they moved into the rental unit and began occupying it as their primary residence as of May 25, 2021. The landlord submitted some receipts for moving services and change of address on their identification as proof of the completed move. The landlord said that they had instructed their realtor to take down the listing for the rental unit in May 2021 but the realtor did not do as they were told. The landlord said they were served with the present application for dispute resolution in May 2021 but did not review it until sometime in June 2021. The landlord subsequently discovered that the rental unit was still listed for sale despite their instructions to their realtor and finally had the listing taken down on July 5, 2021.

The landlord submits that they moved into the rental unit and have been occupying it as their primary residence since May 25, 2021. The landlord submitted into documentary

evidence a copy of a 2021 Federal Census form received at the rental unit, a Canada Post receipt to have mail forwarded to the rental unit as of April 26, 2021, utility bills for the rental unit in the landlord's name for March and April, 2021, an ICBC record showing the mailing address for the landlord changed to the rental unit as of February 1, 2021 and some witness statements from friends detailing the deficiencies in the rental unit informed them by the landlord and stating they believe the landlord subsequently moved into the rental unit.

The parties spent a large portion of the hearing focusing their submissions on the fact that the landlord listed the rental unit for sale in April 2021. Both parties agree that the rental property has not been sold. The tenant suggests that the landlord listing the property for sale demonstrates that they had little intention of occupying the rental unit and have not accomplished the stated purpose for ending the tenancy.

The landlord provided some explanations for their conduct stating at various points that they are elderly and simply followed the advice of their realtor without understanding the consequences, that they listed the property with the intention of a sale not completing until 2022 and that the relator acted in contravention of their instructions by failing to take down the listing as instructed on May 4, 2021.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51(2) of the *Act* provides the circumstances when a tenant who has received a notice to end tenancy under section 49 [landlord's use of property] may be entitled to compensation. The relevant portions of the section, as amended states that a landlord must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that:

a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Notwithstanding the provisions of section 67, under this section the onus is on the landlord to prove, on a balance of probabilities which is to say that it is more likely than not, that they are using the rental unit for its stated purpose.

In the present circumstances the parties agree that a 2 Month Notice dated September 30, 2020 was issued stating that the rental unit would be occupied by the landlord. The tenancy ended in accordance with the notice on January 31, 2021.

The landlord submits that after performing some renovations and work on the rental unit they began moving in March 2021 and completed relocating as of May 25, 2021. The landlord claims they are now residing in the rental unit.

Based on the totality of the evidence I am not satisfied that the landlord has met their evidentiary onus to establish that they have accomplished the stated purpose for ending this tenancy. I find the testimony of the landlord and their documentary materials to be weak and lacking in believable details. As a witness I found the landlord to have little credibility providing testimony which often contradicted their own earlier statements, did not respond to direct questions, and made assertions that were not sufficiently supported in the documentary materials.

I place little weight on the typewritten statements from the landlord's friends who primarily repeat information that was relayed to them by the landlord. I find the nearly identical information and wording of the letters does not strengthen their probative value but creates doubt regarding whether these are the actual observations of the witnesses.

I find that the Federal Census form is by its very nature issued to a mailing address to ascertain information about the residents of an address and not evidence of the landlord's residence. I place little weight on ICBC records or Canada Post receipts as it is open for anyone to request a change in mailing address. Similarly, I find that utility bills are not sufficient to demonstrate that the account holder is the resident of the property.

While I accept that the landlord had some work performed on the rental unit, I find little information that this work was done for the purposes of making the rental unit acceptable for the landlord rather than renovations to increase the value of the property for resale. The undisputed evidence of the parties is that the property was placed on the market shortly after work was performed. While it is certainly possible that the renovation was performed to prepare the suite for habitation by the landlord, I find it equally probable, if not more so given the timeline, that the work was done for the purposes of increasing the resale value of the property.

I place little weight on the written statements from witnesses who were not called to give testimony or be cross-examined at the hearing. I find their statements that they assisted the landlord in moving into the rental suite to be of little probative value. Similarly, I find a single hand-written invoice from a moving service to be of limited assistance in establishing that the landlord relocated and resides in the rental unit. The invoice is dated over a month after the date the landlord says the move took place and appears to be hand written on a generic invoice notebook page.

While the lengthy testimony and submissions both parties gave about the listing of the rental unit for sale has little relevance to the matter at hand, I find the shifting accounts given by the landlord impacts their credibility as a witness. While allowing for the difficulties of providing testimony through an interpreter, the landlord gave testimony which was often inconsistent with their own earlier statements and I find that none of the explanations given about why they listed the rental property for sale in April 2021 when they intended to move into the suite in a month's time to have an air of reality.

The landlord's submission is that they have moved from a neighboring municipality into the rental unit for the purposes of residing in the rental unit. Simultaneously, they have listed the rental unit for sale though they do not intend to sell and vacate the unit until 2022 at the earliest. The landlord has now removed the listing after they realized the ramification of the tenant's present application for dispute resolution. The landlord suggests that they are an unsophisticated property owner who simply acted in accordance with their realtor's suggestions.

I especially find the suggestion of the landlord that their relator initially convinced them to list the rental property for sale and subsequently, in defiance of clear instructions from the landlord, continued to advertise it without the landlord's knowledge or authorization to be unconvincing and self-serving.

I find the landlord's conduct in listing the rental property for sale to be at odds with their stated purpose for ending the tenancy to occupy the rental unit and impacts the credibility of their subsequent statement that they have now moved into the rental unit.

The landlord provided little cogent testimony regarding their residence in the rental unit. Their testimony simply is that they began moving personal items into the rental unit in March and completed their move on May 25, 2021. The landlord gave little information about the reason for their move or details of their current residence in the rental unit.

The onus is on the landlord to demonstrate on a balance of probabilities that they have accomplished the stated purpose for ending the tenancy. I find that the landlord has not met their evidentiary onus. I find that the materials and submissions of the landlord are weak, unconvincing, and insufficient to establish on a balance that they are now residing in the rental unit.

Based on the totality of the materials before me I find that the landlord has not established on a balance that they are residing in the rental unit as they stated on the 2 Month Notice.

Therefore, in accordance with section 51(2) of the Act, as I find that the landlord has not met their evidentiary onus to demonstrate on a balance of probabilities that they have accomplished the purpose for ending the tenancy identified in the 2 Month Notice, I find that the tenant is entitled to a monetary award in the amount of \$56,784.00, 12 times the monthly rent of \$4,732.00 payable under the tenancy agreement.

As the tenant was successful in their application, they are entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$56,884.00. The landlord must be served with this Order as soon as possible. Should the landlord 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: July 27, 2021

Residential Tenancy Branch