Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation from the Landlords related to a Notice to End Tenancy for Landlord's Use of Property, and to recover the $100.00 cost of their Application filing fee.

The Tenants and the Landlords appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One Witness for the Landlords, their daughter, M.B., was also present and provided affirmed testimony.

During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlords confirmed that they had received and reviewed the Tenants' Application, Notice of Hearing documents, and evidence from the Tenants. The Landlords said that on July 3, 2021, they sent their evidence to the Tenants via two registered mail packages sent to the address identified for the Tenant, L.D., on the tenancy agreement. Both Tenants denied having received anything from the Landlords; however, the Tenant, L.D., acknowledged that the address the Landlords used was her parents' address. She said she believes there was a registered mail package card, but she said she had not picked it up yet. L.D. said that there was only one card, though, and not one for the Tenant, L.S.

I find that the Landlords served the Tenants with the Notice of Hearing in compliance

with section 88 of the Act, when they sent them to each Tenant via registered mail on July 2, 2021. The Landlords provided tracking numbers and upon checking the Canada Post tracking guide during the hearing, I discovered that the packages were available for pick up at the post office for the Tenants on July 6, 2021. I note that one of the Tenants picked up one of the packages on July 13, 2021, after the hearing.

According to Residential Tenancy Branch Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Landlords served their evidence on the Tenants on July 7, 2021, five days after it was sent by registered mail to them.

The Tenant, L.D., acknowledged that there was a registered mail package available to her for pick up, but that she did not bother to pick it up, despite the impending dispute resolution hearing. Based on this, I find that L.D. was not being cooperative and forthright with the dispute resolution process by ignoring the registered mail package; and therefore, I find it more likely than not that the second package that is still available for pick up was sent to the Tenant, L.S., as the Tenants said that they did not give the Landlords their forwarding addresses when they moved out.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application, and the Parties confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 15, 2019, with a monthly rent of $1,700.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of $850.00, and a pet damage deposit of $850.00.

The Tenants' claim is for compensation pursuant to section 51(2) of the Act, based on the premise that the Landlords did not use the rental unit for the purpose stated in the Two Month Notice.

No one submitted a copy of the Two Month Notice, however, the testimony in the hearing elicited the following details about the Two Month Notice.: It was signed and dated November 17, 2020, it has the rental unit address, it was served on November 18, 2020, with an effective vacancy date of January 31, 2021. The Two Month Notice was served on the grounds that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice, because the purchaser or a close family member intends in good faith to occupy the rental unit, pursuant to section 49 (5) of the Act.

The Tenants said:

> Well, after we received this notice. I was shortly asked by [the Landlord] to take pictures of the suite, because they wanted to facilitate public showings and rent it out. See the [online] advertisement – all our possessions are in there. The rental price increased, and I also facilitated a couple of showings for these Respondents. I talked to some people in the showings and they were not relatives. It seemed clear that the daughter was not using the unit. The daughter was conducting the check-over for the security deposit, she was living in the main house at the time.

The Landlords said:

> When we moved in [to the main house] on November 26, we took over the property. Yes, our daughter moved into the main house. She was planning on moving into the laneway house. Her identification and other documents have the rental unit address. On February 1, she was going to move in. She is a full-time student and she was looking for a roommate to pay the payment of the rent. It is fully furnished, and the food and the rent was flexible. Some people showed

> interest and came to see the laneway. She met a few people but didn't feel comfortable.
>
> My husband and I are front line health care workers and it is not safe to share a living space …we lost a close a family member, my brother, to Covid. We said she had no need to pay the rent, and that we will support her until she finds a job. Submissions include paper work with this address, her driver's license, the [cell phone] bill, banking, a job letter with her new address, and the school schedule. The utility bill is under my husband's name from February 1.

I reviewed these documents in the Landlords' submissions and I note that M.B.'s, driver's license, cell phone bill, and her British Columbia Services Card all have the laneway address. I also noted the Landlords' address on their mail; the main house has a different street number than does the rental unit or laneway house. The address on all of M.B.'s documents matches that of the rental unit.

The Tenants said:

> The text messages and laneway notice indicate that she was going to have someone move in with her when we moved out. To reiterate, I found this public advertisement on [the online advertiser]. This was for $1,800.00, available on February 21, 2021. Then we received a text message from the daughter's number on January 31 – asking when the laneway will be ready for checking. I asked when the new tenants are arriving. I legally have until midnight – which it said on the notice given.

The Landlord said:

> My daughter moved in on February 1, 2021, and still lives there. See our evidence with this address on her documents and driver's license.
>
> The only reason we bought this property was because of the laneway. My daughter wanted to move out. In Indian culture, families stay together.… she now has privacy in her own suite. There was no one who ever rented the laneway. Since [the Tenants] left, she has been residing in the house. See the proof of the job letter. She did find a job and is going to pay the rent now.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.
Section 51 of the Act sets out a tenant's compensation, after the landlord serves the tenant with a notice to end the tenancy under section 49 – landlord's use of property. Pursuant to section 51(2), such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord 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.

Based on the evidence before me overall, I find that while the Landlords and M.B. considered renting the laneway house to a roommate for M.B., it is more likely than not that M.B. lives in the rental unit by herself. I find this was the purpose of the Two Month Notice - that the purchaser or a close family member intends in good faith to occupy the rental unit. Section 49 (1) defines "close family member" to mean: (a) the individual's parent, spouse, or child, or (b) the parent or child of that individual's spouse. As such, I find that the Landlords' daughter is a close family member pursuant to the Act.

The bulk of the Tenants' evidence was directed at the agreed fact that the Landlords and/or their daughter, M.B., advertised for someone to rent the unit with M.B. However, the Landlords' evidence supports that this is not what ultimately occurred. Further, I find the Landlords' explanation of M.B.'s discomfort with living with a stranger and the family's concerns regarding the pandemic rings true. I find there are no internal inconsistencies in the Landlords' evidence, which could raise questions in my mind about their version of events. Rather, I find that they were truthful and sincere, and I believe that M.B. lives in the rental unit by herself.

Accordingly, I dismiss the Tenants' Application wholly without leave to reapply.

Conclusion

The Tenants are unsuccessful in their Application, as they failed to provide sufficient evidence to support their version of events. Rather, I find the Landlords provided internally consistent evidence and a version of events that made sense, and which was supported by their evidence.

The Tenants' Application is dismissed wholly without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 14, 2021

Residential Tenancy Branch