



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

On March 21, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with P.L. attending as his witness later in the teleconference. The Landlord attended the hearing, with D.K. and G.L. attending as co-owners of the property. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package and some evidence to the Landlord on or around March 24, 2021 and the Landlord confirmed that he received this package. The Tenant also advised that he served the Landlord additional evidence by registered mail on or around August 3, 2021. The Landlord confirmed that he received this evidence, that he had reviewed it, and that he was prepared to respond to it. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing package with some evidence. As he was prepared to respond to the late evidence, I am satisfied

that this was served as well. As such, all of the Tenant's evidence was accepted and considered when rendering this Decision.

The Landlord advised that his evidence was served to the Tenant by registered mail on June 22, 2021 and the Tenant confirmed that he received this evidence. As such, this evidence was accepted and considered when rendering this Decision. However, as the Landlord did not serve the Tenant his digital evidence or his late evidence, this evidence was excluded and will not be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for 12 months' compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy ended when the Tenant gave up vacant possession of the rental unit on May 30, 2019 after being served the Notice. Rent was established at an amount of \$1,200.00 per month. A copy of the signed tenancy agreement was submitted as documentary evidence.

The undisputed evidence is that the Tenant was served with the Notice on March 27, 2019 and the reason on the Notice was 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.” The effective end date of the tenancy was noted as May 31, 2019 on the Notice.

The Landlord advised that after the Tenant gave up vacant possession of the rental unit on May 30, 2019, he proceeded to move into the rental unit on June 1, 2019. While it was his desire to live in the main unit in the bottom of the property, he could not do so as those tenants were on a fixed term tenancy agreement. He referenced a number of items of documentary evidence indicating that he changed his address and started being billed for utilities in June 2019. As well, he cited the move-out inspection report date of the previous place he was renting prior to moving into the rental unit, which supports his position that he moved into the rental unit in June 2019. He referred to pictures of his personal property, submitted as documentary evidence, which illustrated that he had been occupying the rental unit.

After the tenants in the main area gave up vacant possession of the main unit on December 1, 2019, he began to move his property from the rental unit into the main unit. He then rented out the rental unit for December 15, 2019 after vacating it on December 14, 2019. He provided a copy of that tenancy agreement to corroborate this new tenancy.

The Tenant made submissions with respect to his dissatisfaction with the manner with which G.L. represented the Landlord and conducted business. It was his belief that this behaviour likely was suggestive of dishonesty or something more nefarious. However, he did not make any submissions with respect to the reason on the Notice.

P.L. attended as a witness and advised that she lived in the main unit of the property. It was her belief that the Landlord rented one of the upstairs units to another tenant; however, she was not sure which unit this was specifically, nor could she testify to the specific dates that this happened. Furthermore, she did not have any evidence to corroborate her observations. She did not make any submissions specifically related to the reason the Notice was served.

The Landlord advised that a letter provided as documentary evidence from the Tenant was authored by P.L., and in that letter it was indicated that the Landlord had in fact used the rental unit for six months.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52, and I find that it is a valid Notice.

With respect to the Tenant's claim for twelve-months' compensation owed to him as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on March 27, 2019 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

51 (2) *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

(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.

(3) 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.*

I also note that the good faith requirement ended once the Notice was accepted and the tenancy ended. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective end date of the Notice. Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

Regarding this situation, I find it important to emphasize that Section 51(2)(a) states that the 12 months' compensation is awarded 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." I also find it important to note that the effective date of the Notice was May 31, 2019.

When reviewing the totality of the evidence before me, I have before me the Landlord's solemnly affirmed testimony that he moved into the rental unit starting on June 1, 2019 and he gave up vacant possession of the rental unit on December 14, 2019. As well, I have various documents, submitted as documentary evidence, which corroborate the Landlord's testimony that he occupied the rental unit.

On the other hand, I have little in the way of anything from the Tenant except his belief that the Landlord may not have used the rental unit for the stated purpose on the Notice for at least six months after the effective date of the Notice. The entirety of his testimony focussed on his displeasure with how G.L. managed the property, and his speculation that this could have possibly been indicative of the Landlord not using the property pursuant to the Notice.

In assessing the evidence, I find that the Landlord has provided sufficient and compelling evidence that outweighs the Tenant's speculation, on a balance of probabilities. As such, I am satisfied that the Landlord occupied the rental unit from the effective date of the Notice to December 14, 2019, and that he has complied with the *Act*.

Consequently, I find that the Tenant is not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*. As the Tenant was not successful in his claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

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: August 21, 2021

Residential Tenancy Branch