



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

On March 24, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation. The matter was set for a participatory hearing via conference call.

The Landlords, their Agents and witnesses, and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. As such, I find that the evidence before me is admissible for this hearing.

Issue to be Decided

Should the Tenant receive a Monetary Order for compensation from the Landlords, in accordance with section 51(2) of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The month-to-month tenancy began in June 2015. The monthly rent was \$1,200.00. The Landlords did not collect a security deposit. The Tenant vacated the rental unit on November 6, 2020.

Both parties agreed that the tenancy ended in relation to a Two Month Notice to End Tenancy served to the Tenant by the Landlords in January 2020, with an effective move-out date of March 31, 2020. The reason for the Notice to End Tenancy was that the Landlord intended on moving a close family member, their daughter, into the rental unit. The Tenant’s vacancy of the rental unit was delayed as a result of COVID 19 restrictions.

The Tenant submitted that he moved out of the rental unit on November 6, 2020, and that the Landlords' daughter did not move into the rental unit, in accordance with section 49(3) of the Act.

The Tenant testified that during the first week of March 2021, he attended the rental unit and looked into the window of the unit. The Tenant stated that no one had moved into the rental unit and that his old radio was still sitting on the counter. The Tenant said that soon after, the Landlords, who lived next door, drew all the curtains on every window of the rental unit.

The Tenant submitted pictures from late March 2021 that showed the rental unit with no vehicles in the driveway, all the windows covered and a wooden beam in the driveway that had not been moved since he left it there in November 2020.

The Tenant submitted signed witness statements that he obtained from two of the neighbours in early August 2021. The Tenant stated that both neighbours can easily view the rental unit and surrounding property and that the neighbours do not believe anyone has moved into the rental unit in 2021.

Agent G.C., for the Landlords, submitted the following:

- A photo of the daughter's (Witness P.S) drivers license with the address of the rental unit.
- Bank statements to show that P.S. began paying rent of \$1,300.00 to her parents, starting in December 2020.
- A copy of a BC Hydro bill indicating that an account had been opened on November 12, 2020, under the name of P.S., for the rental unit.
- A copy of a Fortis BC bill indicating that an account had been opened in December 2020 under the name of P.S.
- A copy of a Fortis BC bill from August 2021 with the same ongoing account info.
- A witness statement, dated August 6, 2021, stating that the witness sees P.S daily and assisted her to move into the rental unit.
- A witness statement, not dated, stating that the witness helped P.S. set up furniture in the rental unit on February 13, 2021. The witness visited again on May 8, 2021 and on July 3, 2021.

Agent G.C. stated that, at the end of the tenancy, the rental unit had been "uninhabitable", and that the Landlords had to complete a "full reno" to make it habitable.

Witness P.S. testified that she moved into the rental unit on February 7, 2021 and that she still lives there. The blinds have been drawn on the rental unit because of the Tenant looking into the windows. P.S. stated that she works six days a week, so isn't at the rental unit very often. P.S. stated that there were no pictures submitted of the inside

of the rental unit as she did not feel comfortable submitting or sharing the pictures with the Tenant.

Witness P.S., in written submissions, stated that both she and her parents contracted COVID 19 in November 2020; however, despite the challenges of their health, had to spend a great deal of money repairing the damage caused by the Tenant.

Agent G.C. submitted that the Tenant had been caught on the property on March 5, 2021, while looking through the window of the rental unit. The police were called, and the Tenant was advised not to attend the residential property.

Landlord B.S. testified that they had to patch some walls in the rental unit, that it took 3 full days to air-out the carpets, and that they painted the walls and cabinets. Landlord B.S. stated that they did the renovations on their own and acknowledged that there were no pictures of the repairs, and no documentary evidence such as estimates or receipts for trades or supplies.

Witness A.S. testified that he helped do some painting in the rental unit and helped set up wi-fi in January 2021. He stated he helped for approximately 3 days.

Witness R.J. testified that he is the fiancée of P.S. and that he helped paint baseboards, set-up security cameras in the rental unit and moved in a printer. He stated that he helped P.S. move into the house on February 7, 2021 and moved in a couch, TV stand, 40" TV, and set up an office.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the Act applies existed, and that this tenancy ended on or about November 6, 2020, as a result of the issuance of a Two Month Notice by the Landlords pursuant to section 49(3) of the Act, on the basis that the Landlords or their close family member, intended in good faith to occupy the rental unit.

A tenant may apply for an order for compensation under section 51(2) of the Act if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished 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.

Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances. The onus is on the Landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the Act.

Residential Tenancy Policy Guideline 50 states the following:

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

In this case, Agent G.C. stated that, at the end of the tenancy, the rental unit had been “uninhabitable”, and that the Landlords had to complete a “full reno” to make it habitable. Witness P.S. submitted that both she and her parents (the Landlords) contracted COVID 19 in November 2020. Although it was not directly expressed by the Landlords during the hearing, I find that this evidence was submitted to provide context as to why there was a 3-month delay for P.S. to occupy the rental unit.

I accept Landlord B.S.’s testimony that the renovations were completed by friends and family. Based on both Landlord B.S.’s testimony and the Landlords’ witnesses, I find that the Landlord spent several days patching walls, painting the interior of the rental unit, and airing out carpets. I find that it may have taken a few more days to set-up wi-fi and install security cameras. Based on the Landlords’ testimony, I find that the repairs/renovations may have taken, at most, two weeks to complete.

When I consider Agent G.C.’s submissions that the rental unit was left in an “uninhabitable” condition and that the Landlords were required to complete a “full reno”, I find that this conflicts with Landlord B.S.’s description of the renovations that consisted of patching and painting interior walls and the cleaning of carpets. I find that there is no evidence in front of me to support the Landlords’ position that the Tenant’s rental unit was left in an uninhabitable condition, that full renovations were required or that full renovations of any kind, other than painting, were completed. As such, I find that the Landlords have submitted conflicting evidence and have compromised their credibility regarding any repairs or renovations that were required after the tenancy ended. As such, I find the Landlords have failed to provide sufficient evidence to prove that exigent circumstances existed to justify a 3-month delay for the occupation of the rental unit by Witness P.S.

I acknowledge that Witness P.S. submitted that she and her parents (the Landlords) contracted COVID 19 in November 2020; however, P.S. did not state there were any

delays as a result. I also note that that there was not any evidence presented to me to support that the Landlords contracted COVID 19. As such, I find that the claim of contracting COVID 19 does not provide an exigent circumstance or reason for a 3-month delay for the occupation of the rental unit by Witness P.S.

When I refer to Policy Guideline 50, I note that it defines a reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required and that it will usually be a short amount of time. In this case, I find the amount of time that would be fairly required would be the time it took to complete the renovations and clean the rental unit, at most 1 months' time. I accept that the Landlords and their daughter, P.S., have claimed that P.S. moved in on February 7, 2021; 3 months after the Tenant provided vacant possession of the rental unit.

Although I find that contracting COVID 19 and having to conduct a full renovation could likely account for a 3-month delay, I find that the Landlords have failed to provide sufficient evidence to prove that they contracted COVID 19 or that a full renovation was completed. As such, I find that the Landlords failed to establish that they accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, in accordance with section 51(2) of the Act. In this case, rather than using the effective date of the notice to end tenancy, which was much earlier in 2020, I am using the date of November 6, 2020, the day the Tenant provided vacant possession of the rental unit.

To continue with my analysis, I note that the Tenant has claimed that the Landlords not only failed to have their daughter move into the rental unit within a reasonable time but that the Landlords fully failed to accomplish the purpose for ending the tenancy, in accordance with the Act. Specifically, that the Landlords failed to move a close family member, their daughter, into the rental unit.

The Tenant provided his affirmed testimony that he was able to look into the rental unit in early March 2021 and observe that no one had moved into the rental unit. The Tenant stated the unit was vacant, although his old radio was still sitting on the counter and unmoved from when he vacated the unit on November 6, 2020. Based on the Tenant's testimony and confirmed by the Landlords' testimony that they observed the Tenant on the residential property and called the police, I find that the Tenant did have the opportunity to look into the rental unit on March 5, 2021.

I accept that the Tenant submitted two short attestations from neighbours of the residential property, who stated that they did not believe anyone had moved into or lived in the rental unit since the Tenant moved out.

Landlord B.S. and his daughter, Witness P.S., testified that P.S. moved into the rental unit on February 7, 2021. I accept the undisputed evidence of the Landlord that P.S. changed the address on her driver's license to that of the rental unit. I accept that it

appears that P.S. is making a monthly transfer of \$1,300.00. I accept that two different utility accounts were opened under the name of P.S. I accept that the Landlord submitted statements and presented witnesses who stated that they either helped with the painting, helped to move P.S. into the unit or knew that she lived there.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

When I consider the Landlords' evidence, I put very little weight that Witness P.S. moved into the rental unit on the fact that P.S. changed the address on her driver's license or arranged to have the utilities placed under her name as these actions could easily occur without P.S. occupying the rental unit. Furthermore, I find that the statements provided by P.S. do little to support her testimony that she is paying rent to the Landlords or that she moved into the rental unit. I find that the Landlords' testimony was supported by several of the witnesses that were willing to provide affidavits or testimony that they helped the Witness P.S. move into the rental unit or knew that she lived there.

Upon review of the evidence, I find that both parties have provided equally probable versions of the events. Therefore, I find that the Landlords, who have the burden of proof in this case, must provide further evidence to establish, based on a balance of probabilities, that the stated purpose for ending the tenancy was accomplished.

During these dispute resolution proceedings, I am only able to consider the evidence that has been presented before me. Both Agent G.C., Landlord B.S. and Witness P.S. acknowledged that they did not submit any photos to support their testimony that renovations were necessary, that renovations were completed, or that Witness P.S. actually moved into the rental unit. Regardless of not presenting photos of the interior of the rental unit to demonstrate that P.S. moved into and is occupying the rental unit, I find that the Landlords have failed to provide any further evidence to demonstrate that it is more likely than not that P.S. moved into the rental unit.

When I consider the totality of the evidence before me, I find that the Landlords provided conflicting evidence, that subsequently affected their credibility, regarding the circumstances that prevented the stated purpose for ending the tenancy within a reasonable period. Even if the Landlords could prove, on a balance of probabilities, that Witness P.S. moved into the rental unit on February 7, 2021, I find that the Landlords failed to provide sufficient evidence that they did so within a reasonable period after November 6, 2020.

Furthermore, I find that the Landlords failed to establish, on a balance of probabilities, that they accomplished the purpose for ending the tenancy, in accordance with the Act. Specifically, that the Landlords moved a close family member, their daughter P.S., into the rental unit.

As noted above, I have considered section 51(3) of the Act and find that the Landlords have not established extenuating circumstances that prevented the Landlords from accomplishing the stated purpose for ending the tenancy.

Based on the testimony and evidence in this matter, I find that the Tenant has successfully established a monetary claim pursuant to section 51(2) of the Act. As such, I find that the Landlords owe the Tenant the amount equal to 12 months' rent payable under the former Tenancy Agreement; for a total of \$14,400.00.

Conclusion

I grant the Tenant a Monetary Order for the amount of \$14,400.00, in accordance with section 51(2) and 67 of the Act. In the event that the Landlords do not comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims 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: September 1, 2021

Residential Tenancy Branch