



Dispute Resolution Services

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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 of \$25,590.00 from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice"); and to recover the \$100.00 cost of their Application filing fee.

The proceeding took place over two hearings, as the Parties were not finished testifying at the end of the first hearing. As such, we reconvened for a second hearing.

The Tenants, L.P., and R.P, and an agent for the Landlord, W.K. ("Agent"), appeared at the teleconference hearings and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Four witnesses, three for the Landlord, A.A., R.B., and S.D. ("L's Witness", "L's Witness2", and "L's Witness3"), and one for the Tenants, H.H. ("Ts' Witness"), were also present and provided affirmed testimony.

During the hearing the Tenants and the Agent 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

When identifying the Parties early in the hearing, the Landlord advised that the company identified as the landlord in the tenancy agreement was a property management company used by the Landlord/registered owner; however, the Landlord said that he no longer uses this company, therefore, I find that W.K. is appropriately named as the Landlord in the Application.

Further, the Tenants said that the applicant, A.P., named in their Application is their 13-year-old daughter. As such, I find it appropriate to amend the Application to remove A.P. as an applicant, since she is a minor and not a signatory on the tenancy agreement. As such, I have amended the Applicants' names in the Application, pursuant to section 64 (3) (c) and Rule 4.2.

The Tenants provided the Parties' email addresses in the Application and the Parties confirmed these addresses 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.

Near the end of the first hearing, the Tenants commented on the Landlord's employment situation with derogatory comments. While their comments may or may not be founded in truth, I find that this matter is not relevant to the issues that are before me; therefore, I did not consider this testimony in making my Decision.

In the first hearing, the Tenants would sometimes laugh or shout out "liar" or some other derogatory comment during the Landlord's testimony. This is despite my having asked the Parties to remain silent when another person is speaking in the first hearing. Accordingly, in the reconvened hearing, I again requested that the Parties not speak out when another person is speaking. I advised them to take notes about what they want to say about the other Party's comments and to wait for me to call on them for a reply. The Tenants followed these directions in the reconvened hearing.

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 their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on March 15, 2017, and ran to March 31, 2018. The tenancy then operated on a month-to-month basis. They agreed that the Tenants paid the Landlord a monthly rent of \$2,132.50, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,000.00, and a pet damage deposit of \$1,000.00. However, they also agreed that the Landlord returned these deposits at the end of the tenancy.

The Landlord submitted a copy of the Two Month Notice, which was signed and dated July 1, 2020, and which has the rental unit address. It was served in person and by leaving a copy in the mail box/mail slot on June 24, 2020. The Two Month Notice had an effective vacancy date of September 30, 2020, and it was served on the grounds that the rental unit will be occupied by the Landlord and the Landlord's spouse.

The Tenants stated that they moved out of the residential property, so that the Landlord could move in, pursuant to the Two Month Notice; however, they said that there was no evidence of anyone moving into the residential property after they vacated the unit.

They said:

It's fairly straight forward. We received an eviction notice for the Landlord's use of the property. He had to move in and live there for a reasonable amount of time - at least six months. We moved out early on August 15, 2020. It was difficult to move – long and painful. The downstairs tenant moved the month before. [The Landlord] paid us to clean that suite. Bottom line, we moved to [another city] to be close to my child's school. Nobody moved in [to the rental unit].

There was no sign of movement. Contractors were working on the property. Old appliances came out, a new front door went up, he changed the floors and appliances.

We had other reasons for stopping by – we were expecting mail that slipped through cracks. No one was there to collect mail – it piled up inside the door. No mail ever got to me. I spoke with one of contractors in January – he handed me a couple of things inside. It was clearly being renovated, no one was living there. This is why we have [the Witness] on the line. She lives five houses down. She

walks her dog twice a day past the property. She said no one has ever moved in. No cars are parked there. [The Landlord] drives a nice black Mercedes – it was never there. You can see the contractor's things strewn about in pictures. At no point did [the Landlord] live there.

The Landlord said:

Of course, I completely deny that. They were evicted on the 15th. I moved the same day after.

I moved from Edmonton at the end of February with my family - my wife and three kids. In the beginning, we stayed with in-laws to get things together, as we needed help with the kids. We moved in with my in-laws for a few weeks, until we sorted out the move to [the residential property].

We moved from Alberta at the end of February. When the time came, I wanted to move into my property. I found out there was a ban on evictions from the government, so, I was not able to. This put us in a bad situation. During Covid – it was not fun with all the family there... The process took longer than expected.

Staying with them created problems, personal problems between me and my in-laws. I am a doctor, so work in a clinic. There was a lot of conflict, that I shouldn't stay anymore.

I talked to the property manger, who served the eviction notice. The plan was to move in with my family. In the meantime, conflicts escalated between me and my wife – we separated, because of all of these conflicts – 'you have to move by yourself'.

I was in very rough shape. I separated. I moved the day after – with simple furniture. I am a physician working during a pandemic. I leave between 9:00 and 9:30 a.m., and I'm very busy. I don't finish until 6:00 – 6:30 p.m., and I get take-out food. My two parents are elderly; they don't speak English, and they live [nearby]. They depend on me. My brother is on disability.

I am not home until after 7:00, 8:00 or 9:00 - so if there's no sign of me, I'm a physician who works. I am barely home.

I moved to the house and was surprised – it's an old house 50 plus years. It had a very bad smell from urine on the carpets. The house is 50 plus years old, and it needed renovations.

The contractor found it difficult with his allergies. I decided to move in, since I was working and had no kids with me. He did the floors, updated the kitchen, and did the painting over a few months, and worked around my time. There was no issue – they would tell me to move my stuff. I had simple furniture. When they do the upstairs, I go to the downstairs – move my stuff back and forth there. I was in rough shape, trying to work things out with my wife. Things didn't go in the right direction. I found myself in this big house – a corner lot, with three bedrooms upstairs, a bedroom downstairs, a kitchen, and living room.

To prove this, I submitted documents that show I changed my address to this house with the eviction notice. I changed my insurance, changed it to the house.

The Landlord submitted text messages he exchanged with a gardener, E.G., who agreed to mow the lawn and trim the hedges at the residential property on October 7, 2021.

The Landlord submitted a utility bill for the residential property, which has his name for the billing period of January 1, 2021. The Landlord also submitted copies of his telephone bills, which are addressed to him at the residential property address. These are dated:

September 10, 2020
October 10, 2020
November 10, 2020
December 10, 2020
January 10, 2021
February 10, 2021
March 10, 2021
April 10, 2021

The Landlord submitted ICBC statements addressed to him at the residential property address. The first is dated January 14, 2021 and the second has a due date of May 1, 2021.

At the reconvened hearing, the Tenants called their witness, Ts' Witness, as she had taken the day off for this hearing, and needed to testify sooner than later.

The Tenants asked the Ts' Witness a series of questions, which I have set out below:

Q: How long did you know us for on [residential property address]?

A: It feels like forever, well over three years.

Q: You have been to the address at [residential property address]?

A: Yes. In the house.

Q: Describe how the house was maintained.

A: It was always clean and tidy; our girls were over there for play dates. I was very comfortable having the girls there.

Q: Did we have pets?

A: Yes

Q: Any odour or mess?

A: No, I have allergies, so I would have gotten itchy, watery eyes.

Q: You were aware of the situation - that we had to move out. Did we tell you the reason?

A: Yes, the Landlords had given you notice that their family was moving back in, so you had to move out.

Q: We moved out on August 15, and did the condition inspection report a few days later. Did you notice anyone moving in?

A: No, no one moving in. It was clear that nobody was there. There were scattered newspapers that were left on door handle – the sun had taken the colour. I picked up the paper quite a few times. Lawn not mowed, garbage and recycling not taken out, so no one was there.

Q: Was there any activity at the end of 2020?

A: There was some construction – it looked like some damage to the front door – boarded up and being replaced.

Q: Had someone broken in?

A: No, there were no lights on, and it's on a corner. There were never any cars in the driveway, and the garden was not tended. The lights were not on.

Q: Activity ceased?

A: It picked up when the for-sale sign went up - they had done a little clean up.

Q: When did the for-sale sign go up?

A: I don't quite remember. I took a picture and sent it to them. I was so stunned that it was for sale, because they had said that the Landlord was moving in. I don't remember the exact date – looking back – it was February 18 that I sent that.

The Ts' Witness also said: "The Lawn has been mowed, outdoor maintenance done, but I didn't see it mowed until that point."

The Landlord commented on the mail having collected. He said he did not collect it, because he is "very busy". He said:

My car was parked in the garage on the back of the home. I don't always have a chance to see the front. The other thing – re construction – it was inside and minor, which is why she didn't see any signs outside.

Again, saying the lights are off, I'm a physician working, and I leave early. What she said didn't prove that I did not live in the house.

The last time [the Tenant] said he missed important mail, I just got advertisements. Regarding that the gardener was not there – had not done the lawn. I submitted my text with the gardener. It was done when the lawn was high. The house was not ignored, if you see some changes - of course - the family used to live there. My lifestyle is different.

Ts' Witness said:

I work part time; my husband works shift work and I also work shift, so we are up at all times during the night, when we have clients we have talk to. I'm not talking about walking past the house at 12 o'clock, it was at all hours, we were all over the place, and we've never seen anybody.

The Landlord called his first witness. He said he calls this witness, because:

...because of the condition of the house, I decided to do renovations. I'm very busy, always working, but I decided to do some minor renovations. I got in touch with [the L's Witness], who met with me at end of October. He saw me there and came multiple times and he did the renovations. I'm calling him because he saw me living there multiple times.

I allowed the Landlord to ask his Witness questions, which I have set out below:

Q: Explain to [the Arbitrator] that I met with you at my home, and we talked about the renovations and what we wanted to do. Give a brief summary.

A: It's been almost a year. I met with [the Landlord], if I'm not mistaken. We met in the fall of last year to go through renos. There's some renos that needed to be done - fresh paint and so on, and the floors needed to be replaced. When we walked through the vacant house, there was an extensive amount of work needed - flooring, new rail, painted the whole house, did minor electrical, some bulbs weren't working, changed cover plates and switches, the kitchen counter tops, that was about it. We replaced the entry door - wear and tear from weather. We painted it, but that didn't look good. So, we changed it. I got the inside hardware, painted it, and handed it over to [the Landlord].

Q: Where was I living then?

A: First upstairs in the bedroom, then we need to do the work sanding, the drywall touch ups, and painting, so then he moved downstairs 'til we finished over there.

Q: Where am I now living?

A: The last time I sent him the bill he was at the house. I believe he lives on [another street] right now. Other than that, he lives in [the city], as well. He's not at the [residential property address] house, not lately, no.

The Landlord said:

As far as I remember, he finished the reno in February. I met with him and paid the amount, and that's all; that was the last interaction with him.

The Tenant asked the L's Witness when he finished the work, and the L's Witness said:

I believe it was . . . I would say from my pictures the end of January/the first week of February 2021.

The Tenant said:

I was going to ask him – there's no evidence that [the Landlord] actually stayed there. There's no furniture, no moving truck or evidence that he moved ... he lived only in the bedroom, he didn't cook, then mysteriously it's for sale.

The witness has to bail the moment I ask him questions. That puts his testimony in question.

I agree that the L's Witness was unable to remain in the teleconference call long enough to answer the Tenants' questions. As a result, I give less weight to the L's [first] Witness.

The Landlord said:

He saw me when I was living there. He didn't see me move; I moved after the Tenants were evicted. I had no where to go. I was separated from my wife, so I moved in. I had my necessities, I had a single bed, mattress, simple table, chair. I moved by myself. He came and saw me after a few months . . .

To add, I have my paperwork that all came to that address. I was there the whole time from August until April. But I hope the other witnesses saw me in the same way.

The Landlord called another witness, L's Witness2. Their discussion is set out below:

Q: You came and did some painting on my home; do you remember the timing?

A: It was sometime after Christmas, like January.

Q: Do you remember seeing me in my home?

A: When we come in the morning, you would offer some coffee and go to work, and we would start working.

Q: Were there any signs that I was living there?

A: Of course, when we would go to the bedrooms, we moved a single bed and a

small table.

Q: So, there was signs; are you sure that I was living there?

A: From what I remember, I used to see you in the morning before you left to work. You were having breakfast and your coffee.

Q: How long did it take you to do the work?

A: Back and forth probably a month, something like that.

The Tenant had the opportunity to ask the L's Witness2 questions, as follows:

Q: You worked for one month doing painting in January? Which suites did you paint?

A: We painted the whole house, and we pressured the exterior. We painted the entire interior and pressure-washed outside.

Q: What time did you arrive for work?

A: Always between. 7:30 to 9:00.

Q: You witnessed [the Landlord] getting ready during the weekend?

A: Yes. No, I didn't come to suite on the weekend. We were actually not as busy, so we were taking all the Saturdays off.

Q: You say you witnessed some bedroom furniture. Can you describe it?

A: Honestly, it's been a year. A single bed for one person. I can't remember more clearly. I remember we had to move it to one side and paint that wall.

Q: Did you work for him prior to this job?

A: No, it's the first time I met him. And I didn't work afterwards - just that house that time. That was it.

Q: You got paid of course.

A: Yes. It was a business relationship.

The Landlord then called his third witness, L's Witness3. Their discussion is set out below:

Q: You remember you made the kitchen for me?

A: Yes, we did the work in the kitchen.

Q: At what time, approximately?

A: I think we dismantled the kitchen sink and dishwasher sometime in December, I guess, and then that was finished in January. We came back to put it all together.

Q: The situation of the kitchen - before we stated – any reason to change it?

A: Yeah, vaguely, it was the old-style drop-in sink, and the kitchen was pretty old.

Q: How long did it take to disassemble and reassemble the kitchen?

A: We came about two to three times. We dismantled, one of the taps that was leaking, so we changed that. Later we installed the kitchen sink and the dishwasher.

Q: What time did you start to work?

A: We came around 8:00 to 8:30.

Q: Who opened the door for you?

A: It was you sir,

Q: Any sign that I was actually living there?

A: I saw some furniture in the family room – a table and chairs, makeshift kitchen, the micro and coffee maker.

The Tenant asked the L's Witness³ the following questions:

Q: Did you do any work in August 2020?

A: I don't remember. Not replacing it in August. I did it in December and finished in early January, yes.

Q: So, you didn't have any work to do at the property in February 2021?

A: No, I don't think so.

Q: So, you only worked for a little less than a month?

A: Yes, it was for changing the kitchen sink – 2 to 3 hours to get a new one in.

Q: You worked everyday?

A: No, only 2 to 3 times. I dismantled kitchen sink, then came to replace a shower, because the painter needed water for washing their tools. So, the sink was leaking, damaging the floor. Old houses - they do have – they have problems.

Q: Did you have any reason to do any work in the bedroom?

A: No.

Q: Bathrooms?

A: No, only the kitchen.

Q: Any work in basement suite?

A: No, all upstairs.

The Landlord said:

I provided enough witnesses and lived in it as my home. The circumstances changed, and I had to downsize and sell the home, but the time I lived in it was more than six months - more like eight to nine months. I am sorry the family had to leave. I had no issues with them. There was management. I don't have any issues with them. No reason to cause them any harm. Things happen. I apologized to them for any inconvenience.

The Tenants said:

Based on [the Landlord's] evidence, we were done on August 15th, so the day after we were completely moved out, he moved in.

The sign went up for sale on the 18th. The only witnesses are paid contractors that he had done business with. They saw him living in a single cot, with one cup. The end of October to the beginning of February. One contractor could only account for being there two to three times during December.

By [the Landlord's] own evidence, he has had nothing that he actually lived in the house. Crashing on a mattress for a few months does not equal six months of moving in with your family. It's impossible that the new owner took possession. [The Landlord] didn't meet the terms of the eviction notice

The Landlord said:

I had to move the day after they moved, yes. I didn't move with my family, because we got separated. I moved by myself. I did submit evidence that I changed the insurance policy that I live there. This house is no more tenants.

I submitted a lot of evidence each month from August to April. It was Covid time, and nobody's allowed to visit anyone. So, who saw me living there? Yes, they are contactors. I worked six days a week, and I didn't see anyone else.

The Tenants said:

A lot of – every one of those bills is printed from a website. I don't know how he got them in the mail then. There isn't a single – he said he got them in the mail, but they are printed out. All throughout this evidence there are glaring inconsistencies. He never once called the real estate company, not a move-in or out inspection; none of the contractors mentioned any pet smells, things like that. I trust that a person can see what's going on here.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party.

For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

I find that the Two Month Notice is consistent with section 52, as to form and content. I find that the Landlord provided objective evidence from third parties who would have nothing to gain from testifying on behalf of the Landlord. I find on a balance of probabilities that the Landlord's three witnesses established that they saw the Landlord in the house in the mornings after they arrived and before he left for work.

I find that the Landlord explained how his family circumstances changed, due to having to share a residence with his in-laws for an extended period of time, when evictions were not allowed, due to Covid protocols. I find that the Landlord's explanation of the limited time he spent at the residential property is consistent with the T's Witness's statements about not having seen lights on a lot of the time. I find it more likely than not that the times the T's Witness went by the residential property, the Landlord did not happen to be home then. Further, the Tenant's Witness's testimony of having seen work being done on the property is also consistent with the Landlord's testimony, as well as that of his Witnesses.

The Landlord provided a believable explanation as to why his family did not move into the residential property with him after the eviction. However, I find that given these circumstances, the Landlord would need a place to live. Further, I find it consistent with common sense and ordinary human experience that someone who is a physician during a pandemic would be very busy at work, as the Landlord has said he was. While the Landlord's living situation may not have been comparable to that of the Tenants, I find his description makes sense, overall.

When I consider all the evidence before me, overall, I find on a balance of probabilities that the Landlord's version of events rings true. I accept that the Landlord lived in the residential property from mid-August 2020, until he had to sell the residential property approximately seven months later.

As a result, I find that the Tenants are unsuccessful in their Application. I dismiss their Application wholly without leave to reapply.

Conclusion

The Tenants are unsuccessful in their Application. The Landlord provided sufficient evidence on a balance of probabilities to establish that he used the residential property

for the purpose set out in the Two Month Notice. 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: October 20, 2021

Residential Tenancy Branch