



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; her son and husband; the tenant; her advocate and witness.

While the service of documents and evidence was sporadic on the part of both parties, no issues were specifically identified related to this service that prevented either party from being prepared to respond to each others' positions.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation related to a notice to end tenancy for landlord's use of property, pursuant to Sections 51 and 67 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on January 24, 2019 for a one year fixed term tenancy beginning on March 1, 2019 that converted to a month to month tenancy on March 1, 2020 for a monthly rent of \$1,850.00 due on the 1st of each month with a security deposit of \$925.00; and
- A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property issued on June 28, 2021, with an effective vacancy date of August 31, 2021, citing the rental unit will be occupied by the landlord or the landlord's spouse.

On her Application for Dispute Resolution the tenant wrote:

"I was given two months notice to end tenancy for landlords use of property June 18th 2021. July 31st 2021 I vacated the residence under the impression that it

was needed for the landlord to reside in as she intended to retire. She outlined to me her intent to sell her business ..., and to move into the property as of September 1st. As of today's date (November 02 2021), Neither herself or her husband have moved into the property."

In her initial written submission, the tenant put forward a number of arguments contesting the landlord's motives in wanting to end the tenancy, including issues related to seeking repairs and her understanding of the landlord's desire to sell the property, and actions taken by the landlord at the start of the tenancy in 2019.

The tenant then goes on to state that after she moved out she had friends in the neighbourhood and that she would visit them, almost on a daily basis. As a result, she either drove or walked past the property on a regular basis and has a "concise record of activity at the property with photo evidence and written documentation from residents on the street."

The landlord submitted that while they had originally intended to move into the rental unit in the middle of September 2021 they delayed their move because her husband had cataract surgery on September 15, 2021 and ultimately moved into the rental unit in the last week of September.

The landlord explained that as part of their retirement they decided to move into the rental unit and leave their sons to live in the home that had been their residence prior to their move into the rental unit. The landlord confirmed that she and her husband still spend time at their previous residence as they help their sons manage that house. The landlord also testified that they did not hire moving trucks but rather they moved everything they needed in their van; she submitted a photograph of the back of a van with no seats.

In support of her position, the landlord has provided several photographs showing both the contents of some rooms and the view outside some windows at various times of the day. The interior photographs show rather spartan furnishings and are limited to a bedroom; the kitchen and eating area and a room with a desk and computer.

The landlord also submitted the following documents:

- Copies of insurance documents confirming the change from rental property insurance to homeowner property insurance;
- Copies of ICBC vehicle insurance documents confirming the rental unit as the address provided as the location where their two vehicles are kept usually when not in use; and
- Copies of Fortis BC bills showing a residential account for the rental unit with the billing address the same as the rental unit.

The landlord also had a witness who testified she was aware the landlord had moved into the rental unit and that she had visited the landlord there once in late September 2021 but that she had not been back there since.

The tenant submitted that after she moved out of the rental unit she moved to a location where she had to go past the residence where she knew the landlord lived prior to the end of the tenancy. She stated that she never saw for sale signs on that property or any moving trucks at any time.

She testified that she had gone back to the rental unit neighbourhood to visit friends and she had seen that the landlord appeared to be completing some renovations that may have involved drywall; paint; toilets and big appliances. The tenant also questioned why the landlord would hold two properties.

The tenant's witness testified that she lives a block away from the rental unit. She testified that she observed that there was one vehicle parked in the driveway all the time, which never moves. She also submitted that she does see another vehicle (a white SUV) that is there for "a few minutes on and off".

The tenant's advocate submitted that the landlord has failed to prove they have moved into the rental unit. The advocate submits that the landlord's submissions are filled with inconsistencies such as:

- The landlord moved into the rental unit slowly, by using their vehicle, and did not hire or have their sons move them;
- The landlord has failed to provide evidence of what would be considered a "full home". Specifically, the landlord's photographic evidence was all taken on a phone camera; no evidence as to why they haven't submitted pictures that look like a home;
- The dates submitted by the landlord are all questionable; and
- The landlord uses her previous residence as a permanent mailing address; and
- The quality of the landlord's evidence, in that there was only the landlord and her single witness who provided testimony during the hearing.

Analysis

Section 49 (2) states subject to section 51, a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

Section 49 (3) states 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.

Section 49 (9) says that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

The parties do not dispute that the landlord issued a two Month Notice to End Tenancy for Landlord's Use of Property, citing the landlord or the landlord's spouse intends, in good faith, to occupy the rental unit.

Section 51 states a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. A tenant may withhold the amount authorized from the last month's rent and that amount is deemed to have been paid to the landlord.

Neither party raised an issue regarding the payment of this compensation, as such, I find this issue is not under dispute.

In addition, the landlord who asked the landlord to give the notice must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, 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.

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 if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from:

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

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

Residential Tenancy Policy Guideline 50 provides that the onus is on the landlord to prove that they have accomplished the purpose for ending the tenancy under Section 49 of the Act.

The guideline goes on to say that 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.

As the tenant's Application and submissions all stem from her assertion that the landlord or her spouse do not occupy the rental unit, at all, I must determine if the landlord, through her evidence and testimony has established that she and/or her spouse had, by the time the tenant submitted her Application, begun to occupy the rental unit.

While I accept the burden rests with the landlord to provide sufficient evidence of occupation, I must consider the landlord's evidence in light of the observations and arguments the tenant has put forward supporting her position that the landlord has failed to move into the rental unit.

I am satisfied by the landlord's documentary evidence that she has converted her insurance policy from a rental property insurance to a homeowner's policy; that her ICBC and Fortis documents provide the rental unit address as the landlord's address.

In regard to the tenant's assertions that the landlord hasn't put up a for sale sign on her previous home or that landlord did not hire movers or have their sons help them move, I find that the landlord provide plausible explanations for these decisions.

I find it is not unreasonable for people to, depending on their family's individual lifestyle or desires, own more than one property for their personal use, including by having some members of the family live in one property and others in another.

I find, in this case, the landlord has provided that she and her spouse wanted to live in their own place after retirement and to leave their previous home for their sons to live in. This is becoming a more common practice as housing prices are increasingly pricing homes for younger people outside of their ability to get into the housing market.

I also note that the landlord stipulated that she and her spouse chose to move into the rental unit as it has the better view and I find that this provides a ring of truth to the decision for the landlord and her spouse to move, instead of, perhaps, having their sons move into the unit.

As to how a person moves, whether by hiring help or having other family members help them provides little guidance in determining whether or not that person is occupying a property.

While the tenant submits that the landlord has not provided evidence of a “full home” and with acknowledgement that the landlord’s photographs show spartan furnishings, I find it is difficult to base any finding on how a person may choose to furnish their home as indicative of a failure to move in.

Again, the landlord has provided plausible responses to this issue. For example, when the landlord was questioned about a mattress on the floor as being their bed, she indicated that is how she and her spouse prefer to have their bed.

Likewise, I am not persuaded by the tenant’s witness’s observations as to whether or not the landlord’s vehicle is in the driveway or whether or not she can see activity in the rental unit. People are not required to spend any specific amount of time in their home for it to be found to be occupied.

When I look at the landlord’s evidence, testimony and submissions in their totality, I am satisfied, on a balance of probabilities, that the landlord, at the time of the hearing, occupies the rental unit as stated in their Two Month Notice to End Tenancy for Landlord’s Use.

While there was a delay in the landlord moving into the rental unit by a couple of weeks, I find, in these circumstances (the landlord’s spouse’s surgery), the landlords accomplished the stated purpose within a reasonable time.

Conclusion

Based on the above, I dismiss the tenant's Application, in its entirety, 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: March 8, 2022

Residential Tenancy Branch