



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for compensation from the landlords related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The landlords, tenant JL, and counsel for the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

Tenant JL testified that she served the landlords with her application for dispute resolution and evidence via registered mail on October 6, 2021. A Canada Post registered mail receipt stating same was entered into evidence. The landlords testified that they received the above package but could not recall on what date. I find that the landlords were served with the above package in accordance with section 88 and 89 of the *Act*.

The landlords testified that they served the tenants with two evidence packages, the first via registered mail in October 2021 and the second in person in advance of the service

deadline. Tenant JL testified that the first evidence package was received on December 23, 2021 and the second evidence package was received in January 2022. I find that the tenants were served with the landlords' evidence in accordance with section 88 of the *Act*.

Preliminary Issue- Naming Parties

Tenant JL's last name on the tenancy agreement entered into evidence is different than the last name on this application for dispute resolution. Tenant JL testified that her legal name is JL but she also goes by JR, her married name, which appears on the tenancy agreement. As the tenant goes by both names, I amend this application for dispute resolution, pursuant to section 64 of the *Act*, to state both names used by the tenant.

Issue to be Decided

1. Are the tenants entitled to a Monetary Order for compensation from the landlords related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims, and my findings are set out below.

Both parties agree that this tenancy began prior to the landlords' purchase of the subject rental property. Tenant JL testified that she moved into the subject rental property on March 31, 2020. The landlords testified that through the process of purchase and sale, they provided the seller with a document titled "Tenant Occupied Property- Buyers Notice to Seller for Vacant Possession." The above document was entered into evidence and states:

- the landlords have entered into a Contract for Purchase and Sale of the subject rental property dated March 25, 2021 (the "Purchase Agreement").

- All condition of sale of the subject rental property under the Purchase Agreement have been satisfied.
- The property is currently rented to tenant(s).
- The landlords intend in good faith to occupy the property
- In accordance with section 49 of the *Act*, the landlords request the seller to give the tenants notice to end tenancy requiring the tenant(s) to vacate the property by 1:00 p.m. on June 30, 2021.

Tenant JL testified that on April 14, 2021 the previous landlord (the seller) served her with a Two Month Notice to End Tenancy for Landlord Use of Property dated April 14, 2021 (the "Notice"). The landlords testified hat the Notice was served on the tenants and their direction. The Notice was entered into evidence and states the reason for this Notice is 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."

Tenant JL testified that she moved out of the subject rental property in accordance with the Notice; however, a few months later, she found it listed for rent on air bnb and subsequently filed this application for dispute resolution seeking 12 months' rent compensation under section 51 of the *Act*.

The landlords testified that prior to purchasing the subject rental property, they lived in a foreign country for approximately four years and purchased the subject rental property to be their family home on their return to Canada. The landlords testified that they took possession of the subject rental property on July 15, 2021 and immediately moved in and began establishing their lives in the region, including signing their children up for school starting in September of 2021. The landlords entered into evidence a 2021 application for their children to attend a private school near the subject rental property. The landlord also entered into evidence the following documents bearing the address of the subject rental property:

- An invoice from Telus charging an alarm installation fee for July 25, 2021.
- A BC Hydro bill for service from July 15, 2021 to September 9, 2021.
- A bank statement from July 14, 2021 to August 13, 2021.
- A credit card statement from July 7, 2021 to August 6, 2021.
- An invoice for dental work dated July 26, 2021.

Counsel submitted that:

- The landlords submitted an application for the private school but did not provide proof that the children were enrolled.
- The BC hydro and Telus invoices does not prove that the landlords moved in, as the services would be necessary for air bnb renters.

The landlords testified that when they first took possession of the subject rental property, they did not have any furniture because their furniture from overseas had not yet arrived, so they had to rent furniture until their furniture shipment came in. The landlords entered into evidence a marine transit insurance lump sum valuation which states:

- Date of Move (if known): July 10, 2021
- Destination address: [subject rental property]
- Items valued over GBP1,500
 - Oak dresser
 - King bed
 - 65" television
 - Painting
 - Leather sofa
 - Shabby sectional

The landlords entered into evidence a Canada Border Service Agency Form pertaining to the above items which states that the importer's (landlords') address is that of the subject rental property and the description of goods being shipped is "household personal effects".

The landlords also entered into evidence email communication between the landlords and the shipping company dated June 24 to June 28, 2021 which state in part:

Delivery address in [subject rental city] is: subject rental address

Personal arrival date into Canada will be July 10.

Upon arrival, I will resume Canadian residency. Up until then, I remain legally resident in the [foreign country].....

The landlords testified that after they moved in, they decided to spend some time visiting family within the province that they had not seen for a long while because they previously lived overseas. The landlords testified that in order to help defray the costs of renting furniture and going on holiday, they decided to rent out their home while they were away.

The landlords testified that they visited family in the province on three occasions between the end of July and the start of September 2021, each for one week at a time. The landlords testified that during each of these visits, they rented out the subject rental property on air bnb. The landlords entered into evidence their air bnb transaction history from January 2021 to January 2022 which shows the subject rental property was rented out on the following dates in the above timeframe:

- July 30, 2021 to August 6, 2021,
- August 7, 2021 to August 14, 2021, and
- August 28, 2021 to September 4, 2021.

The landlords testified that they have lived in the subject rental property full time from July 15, 2021 to the present date, excluding the above listed three weeks.

The landlords entered into evidence a copy of their home insurance policy which states:

- Policy term: From Jul 15, 2021 until cancelled or replaced
- Named insured: [the landlords]
- Insurance location: [the subject rental property]
- Occupied: Yes
- Occupied by: Me and my family
- Primary home: Yes
- Home sharing: Yes, 1 to 10 times per year
- Home business: Yes
- Mailing address: [the subject rental property]

The landlords testified that their home insurance permits them to rent out the subject rental property on air bnb one to ten times per year. The landlords testified that they have not rented the subject rental property out on any sites other than air bnb.

The landlords entered into evidence the following evidence to support their testimony that they have resided at the subject rental property since July 15, 2021:

- purchases from a grocery store in the same city at the subject rental property from August 22, 2021 to September 14, 2021,

- online order dated Aug 12, 2021 for an electric car charger to be delivered to the subject rental property,
- amazon purchase history from August 24, 2021 to December 24, 2021 showing the delivery address for most purchases is the subject rental property.

The landlords testified that on occasion the delivery address is different than the subject rental property because they were sending a gift directly to another person.

The tenant testified that when she found the subject rental property available on air bnb on September 24, 2021, there were no date restrictions and the subject rental property was available to be booked anytime between September 24, 2021 and the end of December 2022. The tenant entered into evidence screenshots of the above availability.

The landlords testified that they had flexibility on their summer vacation dates and so listed the subject rental house on air bnb with no date restrictions. The landlords testified that they wanted to be very careful who they rented the subject rental property to, and after reviewing all the applicants, they only chose those who they believed would take care of the house and whose dates worked for the landlords and the landlords' family.

Counsel submitted that the landlords have not proved that they denied any air bnb requests.

The tenant testified that she remains in contact with some of the neighbours in the subject rental neighbourhood who told her that the subject rental property has become a party house. The tenant did not call any neighbours as witnesses and did not enter into evidence any witness statement from the neighbours.

The tenant testified that she sees very little activity at the subject rental property when she drives by and that the only new things she has seen are a trampoline and a playhouse. The tenant testified that between January and February 2022 she drove by the subject rental property five to six times and saw that the driveway was not shovelled and there were no tracks in the snow. No photographs to establish same were entered into evidence. The tenant testified that sometimes an older white truck was in the driveway.

The landlords testified that they both work full time and have two young kids and that shoveling the driveway is low on their priority list and does not always get done. The

landlords testified that this is their forever home and they have added the trampoline and playhouse for their children.

The tenant testified that the landlords removed their air bnb listing the day they received her application for dispute resolution, that being October 16, 2021. The landlords testified that they could not recall when they removed the air bnb listing but had intended to do so after school for the kids started on September 5, 2021, but forgot to.

Counsel for the tenants submitted that it was curious that the landlords would be willing to rent the subject rental property out until September 4, 2021, if their kids were starting school the next day. The landlords testified that there were staying with family a five-hour drive away from August 28, 2021 to September 4, 2021 and that it was not difficult or unreasonable for them to return home after the air bnb renters left and for their children to go to school the next day.

Counsel for the tenants submitted that the subject rental property was being marketed as a vacation home. The tenant entered into evidence an air bnb description of the subject rental home, drafted by the landlords, which states in part: "You can't get a better holiday home than this!". Counsel pointed to a review left by the landlords about one of the people to who rented the subject rental property on air bnb which states "[A] and his group were great guests. They took care of the property and left it as they found it. We would be happy to have [A] back for a future stay." Counsel submitted that the subject rental property was being rented as a holiday home and the review is indicative of the landlords' plans for future rentals.

The landlords testified that they subject rental property was marketed as a holiday home on air bnb and that they wanted to encourage re-peat renters so that they would not have to go through the long vetting process multiple times. The landlords testified that as per their insurance, they only wanted to rent their home out a few times per years but that it was and remains their only home in which they live full time. The landlords testified that the subject rental property is only rented out when they themselves are on vacation.

Counsel for the tenant submitted that the landlords either (a) used the property for the sole purpose of renting the subject rental property on air bnb or (b) took possession in September 2021, which is not a reasonable period of time after the tenant moved out.

Analysis

Section 51(2) and (3) of the *Act* state:

(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 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.

(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 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 #2A states:

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

Based on the uncontested testimony of the landlords, I find that the landlords took possession of the subject rental property on July 15, 2021. Based on the testimony of the landlords, the Border Services Document, and the shipping evidence, I find, on a balance of probabilities, that the landlords moved from overseas to the subject rental

City on or around July 10, 2021, as stated in communications with the shipping company. Based on the landlords' testimony and the insurance policy entered into evidence, I find that the subject rental property was insured to be occupied by the landlords. I find that the landlords' testimony regarding their intention to occasionally rent the family home out on air bnb while they were away on vacation is supported by the insurance policy which allows the landlords to rent out their home one to ten times per year.

Based on the air bnb transaction history entered into evidence showing the dates the subject rental property was rented, I find that the landlords rented the subject rental property on the following dates:

- July 30, 2021 to August 6, 2021,
- August 7, 2021 to August 14, 2021, and
- August 28, 2021 to September 4, 2021.

I find that the landlords have proved, on a balance of probabilities, that they hooked up hydro for the date of possession, that being July 15, 2021. Based on the landlords' bank statement, credit card statement and dental invoice, all of which are dated in July of 2021, I find that the landlords' primary residence from July 15, 2021 onwards was the subject rental property and I accept the landlords' testimony that they moved into the subject rental property on their possession date of July 15, 2021. I find that given the landlords' arrival in the subject rental city on or around July 10, 2021, it would not make sense to pay to stay elsewhere when you have a vacant home available. Based on the air bnb transaction history, I find that the subject rental property was not rented out from July 15, 2021 to July 30, 2021.

I accept the landlords' testimony that while the subject rental property is their home, they intended to rent it while away on vacation. As the transaction history from possession to January 2022 only shows three instances of rent, I find on a balance of probabilities, that the intention of the landlords was not to operate the subject rental property as an income property, but primarily as a family home. I find that the landlords accomplished the stated purpose for ending the tenancy, that being the landlords moving in. As I have determined that the landlords moved in on their possession date, I find that this occupation occurred within a reasonable time, in accordance with section 51(2)(a) of the *Act*.

Residential Tenancy Branch Policy Guideline 2A states:

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

I find that the landlords lived in the subject rental property continuously from July 15, 2021 to the present date. I find that leaving the subject rental property for vacation, as was done by the landlords for three weeks between July 30, 2021 and September 4, 2021, does not interrupt the section 51(2)(b) six-month time requirement to reside at the subject rental property. Temporarily leaving your home for a vacation does not mean that you no longer reside in your home. I find that the tenants are not entitled to compensation pursuant to section 51 of the *Act* because the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and the rental unit 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.

As the tenants were not successful in this application for dispute resolution, I find that the tenant is not entitled to recover from the landlord the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

The tenants' application is dismissed 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: April 06, 2022

Residential Tenancy Branch