Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2); and
- an authorization to recover the filing fee for this application, under section 72.

This hearing was originally convened on November 08, 2021 and adjourned to March 17, 2022 due to time constraints. This decision should be read in conjunction with the interim decision dated November 09, 2021.

On November 08, 2021 tenants GW and DG (the tenant), advocate IC and witnesses DL, MR, WS and MG attended the hearing. On March 17, 2022 the same parties, except advocate IC, also attended the hearing.

On November 08, 2021 landlord CW (the landlord), advocate DJ and witnesses JW, BL and RH attended the hearing. On March 17, 2022 the landlord, advocate TH, witnesses JW, BL and RH attended the hearing. The landlord represented landlord JO in both hearings. On March 17, 2022 witnesses AM, AL, LK and JH also attended.

All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The two hearings lasted a total of 249 minutes, the tenants submitted 70 pages of evidence and the landlords submitted 52 pages. I heard seven witnesses who were excluded from the hearing until it was their turn to speak.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made

by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Preliminary Issue – Service

The tenant served the notice of hearing and the evidence to the landlords via registered mail on May 24, 2021. The landlord confirmed receipt of the packages.

The landlord served the response evidence via registered mail to the tenants on October 27, 2021. The tenants confirmed receipt of the packages and that they are aware of the response evidence.

Based on the testimonies offered by both parties, I find the tenants served the notice of hearing and the evidence and the landlords served the response evidence in accordance with section 89(1) of the Act.

Witnesses

After I heard the landlord's witness AM the tenant requested to be allowed to have more witnesses.

Rule of Procedure 6.1 states: "The arbitrator will conduct the dispute resolution process in accordance with the Act, the Rules of Procedure and principles of fairness."

Considering the large amount of documentary evidence submitted by both parties and the number of witnesses that attended the first hearing (four for the tenants and three for the landlords), I decided that I would only hear the witnesses that attended the first hearing. I did not consider the testimony provided by witness AM, as this witness did not attend the first hearing.

I explained to the parties I was able to sufficiently ascertain the facts and arguments of the dispute by relying on the extensive documentary and oral evidence submitted by both parties and the seven witnesses.

Issues to be Decided

Are the tenants entitled to:

1. a monetary order for an amount equivalent to twelve times the monthly rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties and witnesses, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties: "Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered."

Both parties agreed the tenancy started in July 2013 and ended on May 31, 2019. Monthly rent when the tenancy ended was $1,212.54, due on the first day of the month. The landlord collected and returned a security deposit of $550.00. The tenancy agreement was submitted into evidence.

Both parties also agreed the landlord served and the tenant received a two month notice to end tenancy for landlord's use (the Notice) in March 2019. Both parties agreed the effective date of the Notice was May 31, 2019. The landlord served the Notice for her son JW to occupy the rental unit.

The landlord sent a letter to the tenants on March 24, 2019:

> As you are aware we were in [redacted for privacy]. The main reason for our trip was a very happy family event, our son's wedding, which took place on March 10th, 2019. We are serving you with the Notice. The reason is that our son and daughter-in-law will be moving to the apartment you occupy.

The landlord and JW affirmed that JW and his wife CA cleaned the rental unit and moved to the rental unit on June 08, 2019 and moved out on December 14, 2019. JW stated he slept in the rental unit at least 5 nights per week. The tenant disputed this and testified the rental unit was not occupied until the end of January 2020 and the landlord advertised the rental unit asking for monthly rent of $1,700.00.

The landlord submitted a sworn statement from JW dated October 26, 2021:

> I, JW, make oath and say that:
> I am the son of CW.

> That I moved with my wife, CA, to my parents' apartment located at [rental unit's address]
> That we lived at the above mentioned address from June 8th to December 14th 2019.

The tenant said the landlord tried to terminate the tenancy 3 times before serving the Notice and was unsuccessful.

Both parties had a hearing at the Residential Tenancy Branch on May 24, 2019. The tenant submitted a copy of the May 24, 2019 decision into evidence: "The landlord indicated that the stated purpose on the 2 Month Notice may not be fulfilled." The tenant withdrew the application to cancel the 2 Month Notice and an order of possession was issued based on the Notice.

The landlord stated that she said on the May 24, 2019 hearing that JW may not move in because CA was afraid of the tenants. However, JW and CA concluded that it would be safe to move to the rental unit, as the tenants moved out.

The landlord submitted an affidavit signed by CA on May 29, 2019:

> 1.On March 29th [2019] I went with my mother-in-law CW to do a scheduled inspection […]
> 20 It was a very scary situation. GW, DG and the other woman are very tall people and their manners and attitudes were very aggressive and threatening. I feared for our safety. I thought they were going to start punching CW [the landlord] any time. That was basically an assault.

The tenant submitted a letter signed by the next-door neighbour: "I TP lived at [redacted for privacy] from October 01 2018 to September 30, 2019. After [the applicant tenants] moved out their suite stayed empty. Signed: TP"

The landlord submitted a second letter signed by TP which recanted the first letter:

> I wrote a note saying that nobody had moved into the suite [redacted for privacy] before I moved out at the end of September 2019.
> I was informed about when the landlord's son moved in and it was on a day that I was away for my care aid job. I was gone [not legible] for 24 hours plus travel time.
> I based my original note on the fact that there was never a vehicle in the parking garage + was informed that he had a truck that didn't fit in the garage as did the previous tenants.

> I did see a couple of people in the stairwell several times but did not stop to chat so therefore I can't say for certainty that nobody moved in. Signed: TP.

The tenant testified the second letter signed by TP indicates that TP saw random occupants, not JW and that TP knew JW, as he was responsible for repairs in the rental building.

JW said he met TP once in the common areas of the rental building and said hello to her. JW does not know why TP wrote the first letter indicating the rental unit was not occupied.

Witness BL affirmed that she owns a business in the same building as the rental unit. BL stated that TP lived in the same rental building and TP wrote the letter indicating that the rental unit was not occupied under duress from DG.

The landlord and JW testified the rental building's garage is small and JW's vehicle did not fit in the garage. JW parked in a building one block from the rental building. The tenant said that JW's car could be parked in the rental building's garage.

The landlord submitted a letter dated October 15, 2021 signed by SH:

> CW, my landlady, advised me in June 2019 that a black pickup truck and a grey car that belonged to her son [JW] and her daughter-in-law [CA] were going to be parked in the garage at the address where I live using my designated parking stall. There is a long term senior living in the building where I live who does not drive I only bought a car this year, 2021 a few months ago.
> I saw those 2 vehicles often parked in the garage from June 2019 and I saw a few times JW and his wife getting off their vehicles and walk out the alley way towards the corner building.
> CW advised that she was going to be out of Canada in September and October 2019 and that her son JW was going to be available if any problem arose, he moved to the corner building across from the alley way [rental unit's address] and she provided us with his cellular number.
> By Christmas 2019 the parking garage was pretty empty. I no longer saw those vehicles parked in the garage and there were vacancies in the building.

The landlord submitted into evidence three BC Hydro bills indicating electricity consumption from June 01 to December 04, 2019 at the rental unit's address. All the

bills are addressed to the landlord and JW. The landlord affirmed that her name is also on the bills so that JW did not need to pay a security deposit to BC Hydro.

The landlord submitted into evidence a letter dated May 18, 2021 indicating the landlord's friend helped to move JW's furniture to the rental unit:

> When JW was moving to a downtown apartment with his new bride, we offered to give him a hand.
> I and two more friends used the company truck on June 08 2019 to take their larger pieces of furniture to a 3 bedroom apartment at [rental unit], we parked on [redacted for privacy] as it is the easiest way to get furniture into the apartments.
> On December 14 2019 we helped to move their furniture out of the apartment…
> Another friend of them helped with their furniture the second time.

The landlord stated that JW hired a plumber to repair the kitchen faucet on June 10, 2019. On December 12, 2019 the same plumber was hired again to unclog the toilet. The landlord submitted two plumber receipts issued on June 10 and December 12, 2019 for service at the rental unit's address.

Witness RH testified he is the plumber that attended the rental unit on June 10 and December 12, 2019. RH saw JW and a young woman with long red hair in the rental unit on both dates. The landlord said that CA has a long red hair. RH affirmed that there were moving boxes on both dates in the rental unit.

Both parties participated in a court trial (the trial). The tenant submitted the transcripts of the trial. The landlord, answering questions during the trial, stated:

> Question: But your son never did move in, did he?
> Landlord: My son occupied the premises and then my daughter in law got pregnant and it was not appropriate for them to live. There are steps there. So then they decided not to continue to live in the suite.
> Question: So if someone were to conclude that you simply lied about your son moving there and that's how you got them out, you'd disagree with that?
> Landlord: I disagree with that, yes.
> Question: All right. Your son lived there for a bit, did he?
> Landlord: Yeah. It was family use. I also use the suite, as well.

The landlord stated the 1,300 square feet rental unit has 3 bedrooms and she stored construction materials in one of the bedrooms, as JW and CA only used two of the three

bedrooms. JW testified that he authorized his mother to store construction materials in one of the bedrooms and he used the other two bedrooms with CA.

The landlord said that JW moved out because CA got pregnant, and she could not take the stairs to access the rental unit. CA's baby was born in May 2020.

BL affirmed that JW and CA moved to the rental unit on June 08, 2019 and moved out in December 2019 and she saw both of them in the rental building. BL allowed JW to use the internet of her business and JW paid for the internet from June to December 2019.

Witness WS stated he was the landlord of tenants GW and DG and he does not know JW and CA. WS walked past the rental building and did not see lights in the rental unit. WS had a general view of the rental building and did not look specifically at the rental unit.

Witness MR testified she is a friend of tenants GW and DG and she helped them to move out on May 31, 2019. MR said:

> As far as I know I was getting reports from [the tenants] that they did not see anybody in the suite, they did not see any activity. At one point I did look towards the suite and saw no activity, one time I was with DG, I'm also aware of her speaking to a tenant in the rental building that had been living there and she also told DG that there was no activity in the rental unit.

MR affirmed she did not see furniture on the balcony of the rental unit and the lights were not on.

Witness DL stated that he drove by the rental building two or three times shortly after GW and DG moved out and he observed the blinds were closed and it looked like the rental unit was not occupied. DL does not remember the dates he drove by the rental building.

Witness MG testified he lived at the rental unit with his mother DG until early 2018. MG moved to another apartment in the vicinity and drove past the rental building 2 or 3 times per day. MG did not see lights on, occupants and vehicle's parked in the parking spot of the rental unit from June to December 2018. MG said that even if the blinds were closed, he could see if the lights were on.

The tenant submitted a monetary order worksheet.

Analysis

Section 49(3) of the Act 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(1) of the Act states: “close family member means, in relation to an individual, the individual’s parent, spouse or child”

Section 51(2) of the Act provides that the landlord, in addition to the amount payable under subsection (1), must pay an amount that is 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.

I accept the undisputed testimony that the Notice was served with the intent of the landlord’s son JW and his wife CA to occupy the rental unit.

I find the landlord’s son JW must have occupied the rental unit from June 01 to December 01, 2019, as the Notice’s effective date was May 31, 2019.

Residential Tenancy Branch Policy Guideline 2A states:

> 6-month occupancy requirement
> 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).
> […]
> E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE
> If a tenant can show that a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:
> • taken steps to accomplish 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
> the tenant may seek an order that the landlord pay the tenant additional compensation equal to 12 times the monthly rent payable under the tenancy agreement.

The parties offered conflicting testimony regarding the occupancy of the rental unit after the tenancy ended. Per section 51(2) of the Act, the landlords have the onus to prove that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the Notice and that the rental unit was occupied for at least 6 months by JW.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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 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.”

I find the testimony offered by the landlord and JW was, overall, credible, straightforward and convincing.

The landlord provided a convincing explanation regarding her prior testimony in the May 24, 2019 hearing. The May 29, 2019 affidavit signed by CA corroborates the landlord’s explanation.

I find the second letter signed by TP is more detailed and convincing than the first letter.

The letter signed by SH on October 15, 2021 corroborates the credible and convincing testimony offered by the landlord and JW regarding the parking of JW’s vehicle.

I find the landlord sufficiently explained why the BC Hydro bills for the rental unit from June 01 to December 04, 2019 were addressed to the landlord and JW.

I find the letter dated May 18, 2021 is detailed and convincing.

I find the testimony offered by RH is also credible and convincing. I note that RH provided a physical description of CA confirmed by the landlord. Furthermore, the landlord also submitted into evidence two receipts indicating a plumber attended the rental unit on June 10 and December 12, 2019.

Based on the convincing testimony offered by the landlord and JW and the trial transcript, I find that JW allowed the landlord to use one of the three bedrooms to store construction materials. I find that JW continued to occupy the rental unit while the landlord was authorized to use one of the bedrooms to store construction materials.

The tenant did not submit the advertisement for the rental unit.

I find the credible testimony offered by MG and the tenants does not outweigh the vague testimony offered by WS, MR and DL, the credible testimony offered by the landlord, JW, RH and BL and the vast documentary evidence submitted into evidence: the March 24, 2019 letter, the May 29, 2019 and October 26, 2021 affidavits, TP's second letter, SH's letter, the BC Hydro bills, the May 18, 2021 letter, the plumbing receipts and the trial transcript.

Considering all the above, I find, on a balance of probabilities, that the landlord's son JW and his wife CA occupied the rental unit from June 08 to December 14, 2019. I find that JW and CA moved to the rental unit within a reasonable period, as they moved in 8 days after the notice's effective date.

Thus, the tenants are not entitled to a monetary order under section 51(2) of the Act.

As the tenants were unsuccessful in their application, they must bear the cost of the filing fee.

Conclusion

I dismiss the tenants' application 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 12, 2022

Residential Tenancy Branch