



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 by way of conference call concerning an application made by the tenant seeking monetary compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and the tenant was accompanied by another person for support, who did not take part in the hearing. The tenant and the landlord each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties agree that the evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for the landlord's failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The tenant testified that this fixed-term tenancy began on May 1, 2018 and reverted to a month-to-month tenancy after April 30, 2019, which ultimately ended on April 3, 2021. Rent in the amount of \$950.00 per month was payable at the end of each month, in advance for the following month, and there are no rental arrears. At the outset of the tenancy the tenant paid a security deposit to the landlord at the time, in the amount of

\$475.00 which has been returned in full to the tenant, and no pet damage deposit had been collected. The rental unit is a 2 bedroom apartment.

The tenant further testified that on February 25, 2021 the landlord served the tenant personally with a Two Month Notice to End Tenancy for Landlord's Use of Property and a copy of pages 1 and 2 of the 4-page document has been provided by the tenant for this hearing. It is dated February 25, 2021 and contains an effective date of vacancy of March 1, 2021. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse. The tenant received 1 month's compensation as required by law.

The tenant believes the landlord occupied the rental unit for awhile, but the tenant's cell phone is still connected to the buzzer at the rental apartment and started getting calls for deliveries to different people living there commencing at the end of June. The deliveries were mainly from Amazon. The tenant investigated and found out that the landlord never moved in. The tenant spoke to a tenant for about 40 or 45 minutes and has provided a recording of the conversation as evidence for this hearing. The person advised that she was paying \$1,100.00 per month for rent and moved into the rental unit in July, 2021.

Also, the strata requires a resident to fill out a Form K and pay a move-in fee, and the property manager advised that she never got the Form K. The property manager's letter has also been provided for this hearing, which states that the property manager got ahold of the owner and was advised by the landlord that he had people staying there while renovating. However, the current tenant advised that some students lived in the rental unit prior to her tenancy.

Another neighbour also provided the tenant with a letter stating that shortly after the tenant moved out, the owner began doing renovations on weekends; that no one occupied the rental unit during the week and then a family moved in. That letter is dated September 5, 2021.

The landlord told the tenant that he left his wife and needed to move in, but admits that he has not. The tenant and the landlord both work for Community Living BC, and the landlord's evidence indicates that the current tenant is a home-share. However, the landlord moved his client into his home and never moved in; the landlord uses it for a share home and gets money for that. The landlord claimed she pays \$375.00 per month, but in a home-share business, Community Living BC pays the landlord an amount depending on the needs of the client, which could be up to \$5,000, and the landlord gets \$716.00 per month for food and rent.

The landlord testified that the tenant has no right to any of this, and is trying to get money for absolutely making up falsehoods about people moving in and witnesses writing letters; it's all garbage. The landlord was fair, up front, and the landlord's letter provided as evidence for this hearing explains what the landlord is going through personally.

The landlord further testified that the current tenant is there and pays \$375.00 per month, but no more than that.

The landlord and the landlord's wife go to the rental unit once in awhile, and the landlord has a different address.

Analysis

The *Residential Tenancy Act* is clear:

51 (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.

There is absolutely no question that the landlord has not moved into the rental unit, but has re-rented. I do not find that the landlord's actions of renting to a client is an

extenuating circumstance. The landlord also testified that the tenant's evidence is garbage and the tenant has no rights to any of this but is trying to get money falsely. I disagree. The landlord has not done what the Notice indicated that he was going to do; move into the rental unit.

I find that the tenant has established a claim of 12 times the monthly rent, or \$11,400.00 (12 x \$950.00 = \$11,400.00).

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$11,500.00.

This order is final and binding and may be enforced.

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: May 25, 2022

Residential Tenancy Branch