



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on October 14, 2021 for compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice).

The parties noted on the cover page of this Decision attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

There were no issues raised with regard to service of the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation relating to a 2 Month Notice, under section 51 of the Act?

Background and Evidence

The tenancy began on March 1, 2020, with the original landlord. The respondent/purchaser (respondent) purchased the property from the original landlord. The tenant said the tenancy ended on August 24, 2021, when he vacated the rental unit. The monthly rent at the end of the tenancy was \$2,000. Filed in evidence was a copy of the written tenancy agreement.

The Notice at issue in this dispute, issued by the tenant's original landlord, was dated July 12, 2021, and listed an effective date of September 30, 2021. Filed into evidence was a copy of the Notice.

As a reason for ending the tenancy, the Notice listed that all 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 intend in good faith to occupy the rental unit.

The tenant wrote in his application the following:

A notice was received that the unit was going to be used by the landlord (purchaser of the unit in this case), but checking rental listings, unit was back to market less than 2 months after my family moved from the unit. Monthly rent was increased by 50%. This dispute is related to lost of good faith on the notice and it is equivalent to 12 months of rental I was paying.

In response to the tenant's claim, the respondent's legal counsel (respondent counsel) had the tenant's witness (OM) testify first.

The witness stated she has known the respondent since they were 11 years old, and moved into the rental unit on December 1, 2021, as a roommate of the respondent. The witness stated she lived in the rental unit with the respondent until May 15, 2022. The witness said that the respondent lived in the rental unit the entire time and that she helped the respondent move into the rental unit in mid to late October 2021.

Upon cross examination from the tenant's legal counsel (tenant counsel), the witness said that the respondent bought the rental unit with the intention of living there, but listed the rental unit when her job changed.

The respondent testified that in early September 2021, she learned about another job, which was a promotion, and at that time, she thought the job, located in another part of the country, had an option to work remotely. The respondent said that she interviewed for the job on September 9, 2021, and learned shortly afterwards she had been successful. The respondent submitted that she then learned she was not allowed to work remotely, but was required to work where headquarters were located.

The respondent said that she explored other options, as she could not pay both the mortgage and rent in another location. This resulted in the rental unit being placed for rent. However, after speaking with her new employer, the respondent said they allowed her to work remotely from home on a temporary basis until the issues are resolved, which she has done until the present.

The respondent testified that when she bought the rental unit, she intended to live in the rental unit and at that time, she was not looking for other jobs.

The respondent said she attended a wedding in the US in early October 2021 for a week, and returned home on October 17, 2021 and began moving smaller items into the rental unit and was fully moved into the rental unit by the end of October 2021. The respondent said she moved her couch into the rental unit on October 29, 2021.

In cross-examination by tenant counsel, the respondent said she moved smaller items into the rental unit on October 1, 2021, such as cutlery, a mattress, and outdoor patio furniture.

The respondent said that the advertisement of the rental unit occurred perhaps on October 7, 2021, and although her new job was to start on September 20, 2021, she had not traveled to that location yet.

The respondent said that she told her new employer of her circumstances in this matter and was given work location flexibility until the circumstances were under control. The respondent confirmed that she was given permission to work remotely around the week of October 11-15, 2021.

The respondent confirmed that on October 8, 2021, she was still trying to figure out her options, and confirmed that the rental unit was placed for rent for a 1 year lease. The respondent submitted that the advertisement was probably removed on October 13-15, 2021.

The respondent confirmed that she removed the listing because she understood the financial repercussions after consulting a real estate agent and a lawyer.

In response to my question, the respondent said she moved into the rental unit permanently on October 18, 2021.

The respondent's other witness, LS, testified that she helped her daughter move into the rental unit the week of October 18th. LS said the respondent's intention when purchasing the rental unit was to remain here in the city.

In cross-examination from the tenant counsel, LS, said the move-in lasted a couple of weeks.

Evidence filed by the respondent included a driver's licence, a bank statement, insurance statement, utilities bills and mail from the bank showing the respondent's address as the rental unit address, a 2022 property assessment notice address to the respondent at the rental unit address, the job offer from her new employer, dated September 14, 2021, email communication between the respondent and the condo building management company regarding booking the elevator for October 29, 2021, for moving in more furniture, further email communication between those two parties about having a friend move into the rental unit, a roommate agreement, and copies of photographs from the rental unit.

Tenant's response and evidence –

Filed in evidence was the tenant's affidavit. The respondent's counsel acknowledged at the hearing that they accepted the tenant's affidavit.

In the affidavit, the tenant submitted they noticed the rental unit being advertised for rent in October 2021, for \$1,000 more than they were paying. At that time, the tenant began communication with the respondent about renting the rental unit.

Final oral submissions, respondent counsel –

Counsel submitted that the respondent had the intention of remaining locally when purchasing the rental unit, but was offered a new job in mid-September 2021, which did not allow a remote work option.

Counsel submitted that the respondent was able to use the tenant's application to convince their new employer to let her remain until the matters were resolved.

Final oral submissions, tenant counsel –

Counsel submitted that regardless of the circumstances, there was an advertisement listing the rental unit for rent for 50% more than the monthly rent the tenant paid.

Counsel submitted that the respondent rented out a portion of the rental unit, which defeats section 51(2) of the Act, as it falls outside the scope of intent to occupy. Counsel referred to *Blouin v. Stamp*.

Counsel submitted that the respondent was prohibited from renting out a portion of the rental unit.

Counsel submitted that the evidence showed the respondent was moving in furniture at the end of the month and that Tenancy Policy Guideline supports that 15 days is a reasonable period of time. Counsel submitted that taking nearly a month was not a reasonable amount of time.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

The undisputed evidence shows that the tenant was issued a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49(5) of the Act. The Notice listed that all 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 close family member intends in good faith to occupy the rental unit.

As this application pertained to the tenant's request for monetary compensation pursuant to the 2 Month Notice, and not a tenant's application for cancellation of a 2 Month Notice, I find it was unnecessary to address the tenant's allegations of the respondent's lack of good faith in issuing the Notice or intention to move into the rental unit for residential purposes.

Section 51(2) provides that if 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 if 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, the landlord or purchaser must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

In this case, the effective date of the Notice was September 30, 2021.

Pertaining to the tenant's request for compensation, Tenancy Policy Guideline (Guideline) states that the landlord or purchaser, in this case, has the burden to prove they accomplished the purpose for ending the tenancy or used the rental unit for its stated purpose for at least 6 months.

Guideline 2A states that the "implication" of occupy means to "occupy for a residential purpose", which does not allow a landlord or purchaser to end a tenancy to occupy and then leave it vacant and unused.

Further the Guideline states:

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room. A landlord cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it. In general, the entirety of the reclaimed rental unit is to be occupied by the landlord or close family member for at least 6 months. (See for example: Blouin v. Stamp, 2021 BCSC 411)

The respondent provided her government-issued driver's licence, bank records, billing statements, a property assessment notice, and insurance statements showing the rental unit as her address. I find this was sufficient and compelling evidence that the respondent has occupied the rental unit as her living accommodation since October 2021, when she moved in, through at the least the date of the hearing, 8 months after the effective date of the Notice of September 30, 2021.

As a result, I **find** the respondent lived in the rental unit for a duration of at least 6 months after the effective date of the Notice, September 30, 2021.

I will, however, address the tenant counsel's argument that the respondent failed to move into the rental unit within a reasonable time required under the Act.

Policy Guideline addresses a reasonable period. A reasonable period will vary on the circumstances. Additionally, *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.*

[My emphasis]

The evidence shows the respondent took over possession of the rental unit on October 1, 2021. In this case, I find the respondent submitted sufficient and uncontroverted evidence that the respondent was away and out of the country for a period of at least a week during the first half of October 2021.

I also find the respondent provided consistent and corroborated evidence that she began moving in some furniture and personal property during the month and moved her remaining substantial furniture in by October 29, 2021.

I find it reasonable that a new homeowner would wait until their return from a foreign trip to complete the move into their property. For these reasons, I find the respondent used the rental unit for the stated purpose within a reasonable time.

In addressing the tenant counsel's arguments that renting out a portion of the rental unit falls outside the scope of the respondent's intent to occupy, I distinguish *Blouin v. Stamp* from the present case.

I find there was no evidence that the respondent reconfigured any part of the rental unit to rent out a separate and private portion of it. The roommate agreement shows the respondent and the roommate were to share the kitchen, bathrooms, living room and terrace, meaning that the roommate did not have exclusive use and occupancy of the rental unit, a right granted a tenant under the Act.

For all these reasons, I find the respondent submitted sufficient evidence to support that the rental unit was used for the purpose stated on the 2 Month Notice as her own living accommodation for at least 6 months after the effective date of the Notice.

As a result, I dismiss the tenant's application for monetary compensation, without leave to reapply.

Conclusion

For the above reasons, I have dismissed the tenant's 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 28, 2022

Residential Tenancy Branch