Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). Tenant FK's application for:

- a monetary order for $9,600 representing 12 times the amount of monthly rent, pursuant to sections 51(2) and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

And tenants' MK and ZK's application for:

- a monetary order for $16,580 representing 12 times the amount of monthly rent, pursuant to sections 51(2) and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

This matter was reconvened from a prior hearing between the landlords and tenant FK on May 16, 2022. At that hearing, the parties agreed that these matters should be heard together. As such, I adjourned FK's application and joined it with MK and ZK's application. I issued an interim decision setting this out on May 17, 2022 (the "**Interim Decision**"). This decision should be read in conjunction with Interim Decision.

Tenants FK and MK attended the hearing. Landlord AT attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlord confirmed, that the tenants served the landlord with the notices of dispute resolution packages and supporting documentary evidence. The landlord did not submit any documentary evidence in response. He stated that he would be relying on his testimony at the hearing instead.

Issues to be Decided

Are tenants MK and ZK entitled to:

1) a monetary order of $16,580; and
2) recover the filing fee?

Is tenant FK entitled to:

1) a monetary order of $9,600; and
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The residential property in question is a single detached house with four self-contained rental units. Tenants MK and ZK occupied the upper unit (the "**Upper Unit**") and tenant FK occupied one of the units on the lower floor (the "**Lower Unit**").

Tenants MK and ZK entered into a written tenancy agreement with the prior owner of the residential property unit starting August 1, 2015. Monthly rent was payable on the first of the month and started at $1,300 but increased to $1,381.70 by the end of the tenancy. This tenancy ended at the end of March 31, 2021. They paid the prior owner a security deposit of $650, which the prior owner returned at the end of the tenancy.

Tenant FK entered into a written tenancy agreement with the prior owner of the rental unit starting September 1, 2017. Monthly rent was $800 and is payable on the first of each month. This tenancy ended at the end of March 31, 2021. FK paid the prior owner a security deposit of $400, which the prior owner returned at the end of the tenancy.

On February 22, 2022, an agent for the previous owner served the tenant FK and tenants MK and ZK each with a two-month notice to end tenancy (the "**Notices**"). These notices describe the reason for ending the tenancy as:

> All of the conditions of 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.

The Notices listed the landlords as the purchasers and listed their address for service as one on 77th Ave. The Notices listed an effective date of April 30, 2021.

The tenants did not dispute the Notices and vacated the rental units at the end of March 2021.

The tenants testified that after they vacated, they returned to the residential property from time to time, where they discovered an overflowing mailbox. They submitted a photo of this mailbox into evidence. In July 2021, they testified that they saw evidence of renovations taking place in the rental unit, and in August 2021 they found an abundance of mail scattered at the front door. The tenant submitted photos showing letters and mail piled up at the front door of the rental unit (one of the tenants placed their cell phone in one of these photos, which showed the date as September 23, 2021).

They also submitted a photo of a large pile of garbage bags in the driveway of the residential property as well as photos of the interior of the Lower Unit (taken through a window) showing an unfurnished kitchen and bedroom with drawers and boxes scattered on the floor.

The tenants testified that they attended the residential property to take pictures of the hydro meter located on the exterior of the house. They testified that from September 2021 to January 2022 the hydro meter showed that very little electricity was used in the property. They submitted a photo taken September 23, 2021 showing the meter at 75,071 kw-hrs and a photo taken January 13, 2022 showing the meter at 75,676 kw-hrs. They stated that this indicated a usage of 605 kw-hrs during this time, which was the equivalent of $56.80 of electricity. They argued that an average monthly hydro bill is roughly $200, and that this low level of electricity usage indicates that the rental units were vacant for that period.

The tenants testified that the landlords sold the residential property in January 2022. They submitted a real estate listing confirming this.

The tenants argued that the landlords failed to use either rental unit for the purpose stated on the Notices, and as such are obligated to pay them an amount equal to 12 times their respective monthly rents pursuant to section 51 of the Act.

AT confirmed that the landlord sold the residential property in January 2022. He testified that the landlords did not conduct a thorough inspection of the residential property prior to buying it and that, when they assumed possession, they discovered that the residential property was not fit for their habitation. He testified that it took the landlords six months to make the residential property “livable”, and that when they purchased the residential property, they had no plans to resell it.

AT testified that the renovations took until mid-October 2021, as the contractor he hired was not “full time” and as AT did much of the renovation work himself.

AT testified that the landlords initially intended to move into the Upper Unit, and have his mother moved into the Lower Unit. He testified that at the time the landlords purchased the residential property they and their extended family lived in a house on 77th Ave. He testified that, in July 2021, his brother and his brother's wife decided to move out of the house at 77th Ave, and that this amounted to change in the landlords’ circumstances, which allowed them to remain living in the property on 77th Ave. The landlords continue to reside at this address.

AT testified that once renovations to the residential property were complete, he started to have “weekend parties” at the house.

AT also argued that, in the event that I make an order for him to pay the tenants compensation pursuant to section 51 of the Act, I should only order a payment be made

pursuant to MK and ZK's tenancy agreement, as FK is their daughter and lived in the same house.

The tenants confirmed that the landlords only attended the residential property one time to inspect the residential property, and that they only spent five minutes there. They denied that the residential property was a mess or in poor condition. They pointed to the fact that the prior owner returned the full amount of each of their security deposits as proof of this.

The tenants argued that the landlords should have spent more time inspecting residential property, prior to committing to purchase it. They noted that many perspective purchasers spent significantly more time inspecting the residential property.

Finally, FK argued that she had a separate tenancy agreement to occupy a separate, self-contained rental unit in the residential property, and paid rent for that unit herself. Accordingly, she argued that she should not be denied compensation pursuant to section 51 of the Act for the sole reason that she lived in the same house as her parents.

Analysis

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

> **Tenant's compensation: section 49 notice**
> 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
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> (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
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> (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.
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> (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
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> (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 no dispute that the tenants were served with notices to end tenancy pursuant to section 49 of the Act, which specified the tenancy was being ended for the purpose of purchaser of the residential property occupying each of the rental units. It is also not disputed that the landlords did not move into the rental units on a full time (even part time) basis or use the rental units for the stated purpose for at least six months.

I do not find that the landlords satisfied the occupancy requirement by hosting "weekend parties" at the residential property. Residential Tenancy Branch (the "**RTB**") Policy Guideline 2A states:

> Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that "occupy" means "to occupy for a residential purpose." (See for example: *Schuld v. Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

Hosting "weekend parties" does not constitute occupying for a residential purpose.

As such, the landlords must prove that extenuating circumstances existed which would have prevented them from using the rental unit for its stated purpose for at least six months, and for failing to occupy the rental unit within a reasonable time after the effective date of the Notices.

RTB Policy Guideline 50 discusses "extenuating circumstances". It states:

> E. EXTENUATING CIRCUMSTANCES
> An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:
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> • A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
> • A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
> • A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.

The landlords have not provided any evidence to support AT's assertion that the rental units' condition was unlivable. Such evidence should have been relatively easy to obtain (for example, photos of the interior of the Upper Unit or the Lower Unit). As such, they have failed to satisfy me on a balance of probabilities that this was the case.

In any event, even if I had found that the rental units' conditions were So poor as to prevent occupation, I would not find that the rental units' condition was a factor beyond the landlords' control that prevented them from occupying the rental units that was.

There is no evidence before me to suggest that the condition of the rental units deteriorated after the landlords viewed the residential property. As such, the landlords new, or ought to have known, the condition of the rental units. If they did not know the condition of the rental units, this was due to their inadequate inspection of them prior to purchasing the residential property. The adequacy of the inspection was entirely within the landlords' control.

Accordingly, I do find this is an extenuating circumstance preventing the landlords from using the rental units for the purpose stated on the Notices.

Additionally, the landlords have not provided any supporting evidence as to the change in their familial circumstances. such evidence should have been relatively easy to obtain (statement from AT's brother or mother, for example). I should also note, that even if such evidence was provided, I am not persuaded that this would have been an "extenuating circumstance" as I cannot say why AT's brother's departure from the house on 77th Avenue prevented the landlords from occupying the rental units.

In any event, I am not satisfied that the landlords have discharged their evidentiary burden to show that any change in their familial circumstances existed. As such I do not find that they have proved that any extenuating circumstances existed.

Accordingly, I find that the landlord is obligated to pay the tenants an amount equal to 12 times the respective monthly rents. I see no basis in the Act to accede to AT's request to only order that tenants MK and ZK receive such a payment. Based on the documentary evidence provided to me, I find that FK had a separate tenancy agreement, for a separate rental unit with the prior owner, I meant she paid rent to stay there. Accordingly, she is entitled to compensation pursuant to section 51(2) of the Act.

I accept FK's testimony that monthly rent for the Lower Unit was $800 at the end of the tenancy. Accordingly, I ordered the landlords to pay her $9,600 pursuant to section 51(2) of the Act.

I accept MK's testimony that monthly rent for the upper unit was $1,381.70 at the end of the tenancy. Accordingly, I ordered the landlords to pay MK and ZK $16,580.40 pursuant to section 51(2) of the Act.

Pursuant to section 72(1) of the Act, as the tenants have been successful in these applications, they may recover the filing fee for each application from the landlord.

Conclusion

Pursuant to sections 51(2), 62, and 72 of the Act, I order that the landlords pay tenant FK $9,700, representing 12 times the amount of her monthly rent plus the $100 filing fee.

Pursuant to sections 51(2), 62, and 72 of the Act, I order that the landlords pay tenants MK and ZK $16,680.40, representing 12 times the amount of their monthly rent plus the $100 filing fee.

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: June 23, 2022

Residential Tenancy Branch