



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FF

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied on October 12, 2021, for compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) and recovery of the cost of the filing fee.

The parties listed on the style of cause 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.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited.

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. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch 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.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation relating to the 2 Month Notice and recovery of filing fee?

Background and Evidence

The tenancy between the tenants and another landlord began on September 1, 2006, and ended on April 15, 2021, according to the tenants. The tenants submitted they vacated the rental unit in response to a 2 Month Notice issued by their original landlord. The rental unit was in the basement level of a home, formerly owned and occupied by their original landlord in the upper level.

This Notice was dated January 31, 2021 and listed an effective move-out date of March 31, 2021.

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 close family member intends in good faith to occupy the rental unit. Filed in evidence was the 2 Month Notice and the written request signed by the landlords/applicants asking the seller to issue the tenants the 2 Month Notice. This request was dated January 30, 2021.

The landlord/respondent, KJM, was listed as the purchaser.

In response to the tenants' claim, the respondent/landlord, KJM, said they moved into the residential property two weeks after getting possession and have been using the entire house.

The landlord submitted that on April 20, 2021, he was informed by his realtor that the former owners were still living in the residential property as they were hospitalized. After a week and a half, the landlord/respondent, KJM, said that he was informed the former owners had vacated and thereafter, they moved into the residential property two weeks after getting possession and have been using the entire house since that time.

The landlord testified that at that time, his wife was 6 months pregnant and over the next couple of weeks, he cleaned and painted the house as the place was “filthy” and damaged. The landlord submitted they had to deal with cleaning up after a mouse infestation.

The landlord submitted their child was born prematurely, on May 23, 2022. The landlord submitted that by mid-May, 2021, they were living full time in the home.

The landlord submitted that they have never advertised the rental unit for rent, that they filed a notice with the city to decommission the suite as a rental unit, and that they pay the property tax.

The landlord submitted that he and his family have “personal use” and occupy the entire home, including the main areas of the former rental unit. The landlord submitted that he is getting personal time to spend with his family, as he takes his other young child to the basement to do projects after he comes home from work. Additionally, the landlord submitted they use the basement as an office and exercise area.

Filed as evidence by the landlord were photos of signs of the mouse infestation and other damage in the rental unit and home. Additional photographs showed furniture and play, office, and exercise equipment in the former rental unit.

Tenants’ response –

The tenant, KH, testified that they were told the purchasers’ family were going to move into the rental unit and they have not done so. Instead, it appears that the purchasers were doing renovations for which they, the tenants, should have been issued a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit. The tenant testified that it did not appear the rental unit has been used at all or that it was occupied.

The tenant referred to their photographs, and asserted that they depict the rental unit was being renovated, which proves the purchasers’ parents did not move into the rental unit. The tenant asserted that the rental unit was renovated at first and that it is not being occupied.

In their written summary, the tenant submitted as they moved into a nearby rental unit, they often walked around the neighbourhood, “including walking by and visiting the park

next to the home”. The tenants submitted that a good size window in the Suite allowed them “to see into Suite and take photos”. The tenants submitted that a BC Hydro access road behind the home allowed them “to view and take photos of the back of the Home,...”.

The tenants wrote that the refrigerator, ceiling and insulation, and kitchen cupboards were removed.

Analysis

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

The undisputed evidence shows that the tenants were 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.

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 must pay the tenant an amount equivalent of 12 times the monthly rent payable under the tenancy agreement.

Tenancy Policy Guideline (Guideline) states that the landlord 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 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)

In this case, while these landlords did not reclaim the space, as they purchased the residential property, I find this section relevant and akin to the landlords' situation here.

I find the evidence shows the landlords claimed the space of the rental unit when they moved into the residential property. I further find that the landlords are using the entire residential property as a single family dwelling, or existing living accommodation. The landlords evidence shows furniture, office, play, and exercise equipment in the rental unit.

The tenants' own evidence shows that the kitchen in the rental unit was removed, which I find supports that the landlords are using the basement space for their own living space.

In addition, I find it reasonable for a landlord to make alterations and repairs to the former rental unit upon their first time living there, as I find this demonstrates they were incorporating the basement level to their own living space. I find nothing in the Act prohibits an owner from making renovations once they moved into their home.

While I find it troubling that the tenants would take photographs of the landlords' home, many at night, I find the photographs, neither compelling nor persuasive.

I also find the landlords moved into the residential property within a matter of a few weeks after receiving possession, which I find to be reasonable.

There was no evidence that the rental unit has been re-rented or that anyone other than the landlords and their children occupy any part of the rental unit.

For all these reasons, I find the tenants have submitted insufficient evidence to support their application for monetary compensation as I find the landlords submitted sufficient evidence to support that the rental unit was used for the purpose stated on the 2 Month Notice as I find the landlords are using the former rental unit as part of their own living accommodation.

As a result, I dismiss the tenants' application for monetary compensation and for recovery of their filing fee, without leave to reapply.

Conclusion

For the above reasons, I have dismissed the tenants' application, including their request to recover the 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*. 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 13, 2022

Residential Tenancy Branch