Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 4, 2021. The Tenant applied for compensation pursuant to section 51(2) of the Residential Tenancy Act (the Act) and to recover the filing fee pursuant to section 72 of the Act.

The Tenant attended the hearing on her own behalf. The Landlords were represented at the hearing by their daughter, GB. Although she initially requested an adjournment (addressed below), GB advised she was able to give some evidence on behalf of the Landlords. Given the familial relationship between GB and the Landlords, I accept she is able to provide relevant evidence on their behalf. Both the Tenant and GB provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on each of the Landlords by registered mail on November 8, 2021. A Canada Post registered mail receipt showing the date and time of purchase and the tracking numbers was submitted in support. Pursuant to sections 89 and 90 of the Act, documents served by registered mail are deemed to be received five days after they are mailed. I find the Landlords' evidence is deemed to have been received by the Landlords on November 13, 2021. GB did not dispute that the Landlords, her parents, received these documents.

The Landlords did not submit documentary evidence in response to the application.

Those in attendance were given an opportunity to present evidence and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Request for Adjournment

At the beginning of the hearing, GB requested an adjournment on behalf of the Landlords. GB stated that her father had to leave the country on May 31, 2022. However, she did not provide a reason for doing so. In addition, GB testified that her mother has ongoing medical issues that prevent her from participating in the hearing but declined to elaborate.

Policy Guideline #45 provides direction when deciding if an adjournment is appropriate. It states:

> Considerations for a request to adjourn include:
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> 1. the likelihood of the adjournment resulting in a resolution;
> 2. the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
> 3. whether the adjournment is required to provide a fair opportunity for a party to be heard; and
> 4. the possible prejudice to each party.

I have considered the above factors. I find that an adjournment is unlikely to result in a resolution.

In addition, I find the need for an adjournment arose out of the actions of the Landlords. As noted above, the Landlords are deemed to have received the Notice of Dispute Resolution Proceeding package on November 13, 2022 – more than six months ago. A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance. If either of the Landlords anticipated they would be unable to attend the hearing, they had sufficient time to find an agent to attend on their behalf.

Further, I find the adjournment is not required to provide the Landlords with a fair opportunity to be heard. As noted above, the Landlords have been aware of the hearing for more than six months, and GB provided few details regarding the reasons the Landlords were unable to attend. In addition, GB attended and was able to provide evidence on their behalf. As the Landlords' daughter, I found GB's evidence to be reliable and straight-forward.

Finally, I find the prejudice to the parties is low. The Tenant is either entitled to compensation or is not. Whether that decision is made in this decision or following an adjournment is not likely to impact the outcome for either party.

For the above reasons, I declined to grant an adjournment and proceeded to hear the Tenant's application on the merits.

Issues to be Decided

1. Is the Tenant entitled to compensation pursuant to section 51(2) of the Act?
2. Is the Tenant entitled to recover the filing fee pursuant to section 72 of the Act?

Background and Evidence

The Tenant testified there is no written tenancy agreement. She testified the tenancy began on May 1, 2021 and ended on September 30, 2021, at which time she vacated the rental unit. During the tenancy, rent of $1,200.00 per month was due on the first day of each month. The Tenant paid a security deposit of $600.00, which the Landlord holds. GB agreed that these were the basic terms of the tenancy.

The Tenant claims compensation under section 51(2) of the Act. The Tenant testified she was given a Two Month Notice for Landlord's Use of Property, dated August 1, 2021 (the Two Month Notice). A copy of the Two Month Notice was submitted into evidence.

The Tenant testified that she was advised the rental unit would be occupied by a daughter of the Landlords (not GB). However, the Tenant testified that BA, a former tenant of the Landlords' neighbour, moved in and continues to live in the rental unit. In support, the Tenant submitted a photograph and a video of a plastic prescription bottle observed outside the rental unit with BA's name on it. In addition, the Tenant testified she spoke with BA who advised her that he moved into the rental unit in November 2021.

In reply, GB testified that the Landlords' daughter and son-in-law moved into the rental unit for a brief time in October 2021. However, GB stated that plans changed and they moved out. GB confirmed that BA moved into the rental unit in November 2021.

At the end of the hearing, the Tenant and GB were given an opportunity to provide additional evidence or make further submissions.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 51(2) of the Act provides that compensation may be due if the landlord does not accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, and the rental unit has not been used for the stated purpose for at least six months' duration, beginning within a reasonable period after the effective date of the notice. Policy Guideline #2A confirms that the landlord or close family member must live in the rental unit for a duration of at least six months to meet the requirement under section 51(2). The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the Act and that they used the rental unit for its stated purpose for at least six months.

For the reasons that follow, I find the Landlords did not use the rental unit for the stated purpose for at least six months. In this case, I accept the testimony of GB who stated that the Landlords' daughter and son-in-law moved into the rental unit for a brief time in October 2021. I also accept the testimony of GB who stated that their plans changed and they moved out, and that BA moved into the rental unit in November 2021.

Section 51(3) of the Act confirms the director may excuse a landlord from paying compensation if there are extenuating circumstances which prevented the landlord from accomplishing the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, and using the rental unit for the stated purpose for at least six months' duration, beginning within a reasonable period after the effective date of the notice.

Policy Guideline #50 provides clarification with respect to the meaning of “extenuating circumstances”:

> An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:
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> - A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn’t notify the landlord of any further change of address or contact information after they moved out.
>
> The following are probably not extenuating circumstances:
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> - A landlord ends a tenancy to occupy a rental unit and they change their mind.
> - A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

In this case, no extenuating circumstances were brought to my attention that excuse the Landlord from paying compensation to the Tenant. I find the decision of the Landlords’ daughter and son-in-law to move is not an extenuating circumstance.

As stated above, I find the Landlords did not use the rental unit for the stated purpose for at least six months. Rather, the Landlords’ daughter moved in for a brief time and was replaced soon thereafter by BA, a new tenant.

Considering the above, I find the Tenant is entitled to a monetary award of $14,400.00 as compensation under section 51(2) of the Act ($1,200.00 x 12 months = $14,400.00). Having been successful, I also find the Tenant is entitled to recover the $100.00 filing fee paid to make the application.

The Tenant is granted a monetary order for $14,500.00.

Conclusion

The Tenant is granted a monetary order for $14,500.00. The order must be served on the Landlords. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 10, 2022

Residential Tenancy Branch