



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 as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for a monetary order in the amount of \$36,100.00, for 12 months' compensation due to the landlord failing to comply with the reason stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 11, 2021 (2 Month Notice) and to recover the cost of the filing fee.

The tenant and the landlords, PA and TA (landlords) attended the teleconference hearing. The hearing process was explained, and the parties were given an opportunity to ask questions during the hearing. 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 testimony and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed that they had been served with documentary evidence from the other party and had the opportunity to review that evidence, I find there are no service issues before me and that the parties were sufficiently served.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Is the tenant entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, is the tenant also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on July 1, 2018 and converted to a month-to-month tenancy after July 1, 2019. Monthly rent was \$3,000.00 per month and was never increased during the tenancy.

The tenants were served with the 2 Month Notice dated April 11, 2021. The effective vacancy date listed on the 2 Month Notice was July 1, 2021. The tenants testified that they vacated on June 30, 2021. The reason stated on the 2 Month Notice states:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ 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)

Please indicate which close family member will occupy the unit.

☒ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

☐ The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit

☐ All of 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 intends in good faith to occupy the rental unit

☐ The tenant no longer qualifies for the subsidized rental unit

Purchaser Information: (complete only if you are a purchaser)

The tenants did not dispute the 2 Month Notice and received their one-month's compensation for having to vacate under the Act. The tenants are seeking compensation in the amount of 12 months' rent due to the landlords re-renting via VRBO.

The landlords admitted that they have listed the rental unit on both VRBO and AirBNB websites and provided a documenting confirming how much they have made renting out the rental unit as a short-term vacation rental. The landlords testified that they wanted to rent out a portion of their home “for flexibility and not money related.” There is no dispute that the rental unit was posted on the VRBO website as of May 31, 2021. The tenant stated they were not aware until the hearing that the landlords had also listed the rental property on the AirBNB website.

The landlords confirmed that between July and December 2021 they earned \$33,636.00 less “expense” of \$12,139.00. One of those expenses was “rental management time” for \$4,600.00 which is money the landlords claim to be paying themselves as a deduction for expenses. The landlords claim that the money earned went towards property taxes and their mortgage. The landlords were questioned why they would be charging cleaning costs if they were not paying themselves. The landlords later admitted that they didn’t pay themselves but did use the amount as a deduction in their list of expenses for “half the time when they did not pay a cleaner.” The landlords later in the hearing states “when we have guests (customers) the basement is inconvenient for us”, which I will address later in this Decision.

The tenant’s response was that the landlords failed to use the rental unit for the stated purpose and instead re-rented a portion contrary to the 2 Month Notice and that they violated the Act as a result. The landlords admitted that the current nightly amount was \$339.00 per night on the vacation rental websites.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

There is no dispute that the landlords advertised a portion of the rental unit as a short-term vacation rental before the tenant vacated on May 31, 2021. In addition, I find the landlord’s testimony to be contradictory. I am not persuaded by the landlord’s statement that they rented a portion of their home as a vacation rental for “flexibility and not money related” as the landlords later admitted in the hearing that it was inconvenient to live in the basement suite when they had guests which I find are vacation rental customers. As a result, I find it is more likely than not that the landlords rented a portion of the home solely for financial benefit as they admitted they use the money to pay for property taxes and their mortgage.

In addition, *Blouin v. Stamp*, 2021 BCSC 411 supports that a landlord is required to occupy the entirety of the rental unit, which in the matter before me is the entire home for at least 6 months. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Landlords or Close Family Member I find takes a reasonable approach and is dated July 2021, so was in effect at the time this hearing took place, and states in part on page 3 of 4:

C. OCCUPYING THE RENTAL UNIT

...

Reclaiming a rental unit as living space

...

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) [emphasis added]

Given the above, I find the landlords have failed to establish that they have occupied the **entire home** for at least 6 months and instead, re-rented a portion as a vacation rental on VRBO and AirBNB, contrary to the stated purpose on the 2 Month Notice.

Given the above, section 51(2) of the Act applies and states:

51(2) Subject to subsection (3), the landlord or, if applicable, **the landlords 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 landlords, 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.

[emphasis added]

Given the above, as I am satisfied that the landlords re-rented a portion of the rental unit as a short-term vacation rental and pursuant to section 51(2) of the Act I find the landlords must pay the tenant 12 times the monthly rent of \$3,000.00. I find the landlords have not met the onus of proof to support that they complied with the reason stated on the 2 Month Notice. I also find the landlords have failed to provide any extenuating circumstances that prevented them from complying with the reason stated on the 2 Month Notice, as I find the landlords made the decision to list a portion of their home on both VRBO and AirBNB, which was actually listed before the tenant vacated the rental unit. As a result, I grant the tenants **\$36,000.00** (12 x \$3,000.00).

As the tenant's application was successful, I also grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find the tenant has established a total monetary claim of **\$36,100.00** comprised of the 12 months' compensation plus the \$100.00 filing fee.

Conclusion

The tenant's application is fully successful.

I find the landlords failed to use the rental unit for the stated purpose and instead, rented a portion of the home as a short-term vacation rental, contrary to the 2 Month Notice as indicated above.

The tenant is granted a monetary order pursuant to section 67 of the Act, in the amount of \$36,100.00 as indicated above. This order must be served on the landlords with a demand for payment letter and then may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlords are reminded that they can be held liable for all enforcement costs under the Act.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenant only for service on the landlords.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 30, 2022