



Dispute Resolution Services

Page: 1

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") under the *Residential Tenancy Act* ("Act"), for compensation of \$43,200.00 from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property dated June 3, 2021 ("Two Month Notice"); and to recover the \$100.00 cost of their Application filing fee.

The Tenant and the Landlord, A.K., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on November 1, 2020, ran to April 30, 2021, and then operated on a month-to-month basis. They agreed that the tenancy agreement required the Tenant to pay the Landlords a monthly rent of \$3,600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlords a security deposit of \$1,800.00, and a pet damage deposit of \$1,800.00. They agreed that the tenancy ended when the Tenant moved out on August 1, 2021, further to having received the Two Month Notice from the Landlords. The Parties agreed that the Landlords returned the Tenant's security and pet damage deposits in full at the end of the tenancy.

The Tenant submitted a copy of the Two Month Notice, which was signed and dated June 3, 2021, and which has the rental unit address. The Two Month Notice was served via registered mail on June 3, 2022, and had an effective vacancy date of August 31, 2021. It was served on the grounds that the rental unit will be occupied by the landlord or the landlord's close family member ([K.K.'s] parents were specified in this case).

The Tenant asserts that no one has occupied the residential property since she moved out, and therefore, that the Landlords have failed to fulfil the purpose set out in the Two Month Notice. The Tenant presented proof that no one lives there in the form of an email dated November 10, 2021, from a next door neighbour of the residential property. In this letter, the neighbour said:

To whom it may concern

My name is [K.A.] and I have lived at the above address for 19 years. During the time [the Tenant] and family have lived on [residential property address] they were my immediate neighbors. I would regularly see various family members as their deck was adjacent to my garage entrance.

Since they moved out in August 2021, I am not aware of anyone else living in that house. I have not seen anyone move in or the presence of vehicles at the

property. Other than a day of yard work being done by a work crew, I have not seen any activity in or around the house.

The Tenant submitted an additional email that she received from this neighbour dated April 30, 2022, in which the neighbour wrote: "...Since writing my original email, I have still not seen any evidence of anyone living in the house. I don't think I have seen a single person in or around the property."

The Tenant also submitted photographs of the residential property showing an absence of vehicles in the driveway.

Further, the Tenant said that she received a call from the RCMP in February 2022, asking if she was the current resident of the residential property. The Tenant said the police told her that the front door had been left wide open and they were looking for the owner of the property. The Tenant said she gave them the Landlord's number, and in the hearing, she said:

To me this is very, very strong evidence that they didn't move a family member in, and that this big home is sitting vacant, which is against the Act and Rules. And in his evidence, he submitted mail from a bank, but he is a banker and can put someone's address as that house. I don't believe there is any evidence of anyone living there.

The Landlord responded to the Tenant's documentary evidence and testimony, as follows:

Her assumption is based on the neighbour's note. I address this in my submission. We have been there. The exact date of the work crew – that was us - my family. Because in [city] you can do yard work for leaving it out for pick up.

In my submissions. I bought the property. My seller had given specific instructions – [the Tenant] knew what I and my family looked like. I delivered mail. She mentioned that no one has done anything except yard work.

Her concern about not seen anyone moving in there. Notice was given on the 16th that my in-laws went to India, and came back on April 29, 2022. Before going to India, they were cleaning the yard.

Yes, the police called me, but someone left that door open. I was there visiting

the property. It was just left open. The neighbour who told me - they informed me it was left open.

Her claim that nobody has been in the property is incorrect. My in-laws still live there, I go there every day. Most of the time [the neighbour's] property is also empty.

I go there to pick up my in-laws. They live there, they sleep there. They don't have a driver's license. It's my in-laws. For proof that they live there, I provided the mail and they lived there. They speak Punjabi only. All of their dealings are done by myself.

I asked the Landlord when his in-laws moved into the property. He said:

In September. [The neighbour] has never seen any individuals. She leaves early in the morning - she's not there. Based on that, and I also provided evidence that my father-in-law had two surgeries before going to India, and they were not moving out that much. I have not used the property for any other purpose.

They had to go to India because my brother-in-law had a pregnancy and complications, they had to help them out. Her saying that about the banking mail - because they don't do their banking themselves. If not the case, my father-in-law, the neighbour's husband saw him going in a bike. But they said they've never seen anybody. They came back on April 29, and they left for India on November 19, 2021. They moved in in September 2021.

The Landlord submitted copies of two boarding passes to India dated November 18, 2021. He also submitted ticket information for the same two people regarding a flight from Delhi to Vancouver on April 29, 2022.

The Landlord also submitted banking documents with his mother and father-in-law's names on it, both having the residential property address. These names match those that are on the airline receipts, as well.

The Tenant said:

My question, in my opinion and from research, consulted with a lawyer twice. There is some evidence of a utility bill in their name, but what about a moving truck rental to prove that they moved in? The other thing to consider is that the

house is over 3,000 square feet, with multiple stairs, and eight bedrooms. It is not likely that they needed a home of this size to be living in. Two people in an eight bedroom house? A lot of yard work. It's not fair to evict me when he knew his in-laws flew away. They could have waited until they were ready to live there. My last point is that I'm not friends with [the neighbour]. We've only spoken in person three to four times. She is not a client – she's a totally neutral third party.

The Landlord commented on details of when the Tenant moved out, which are not relevant to my considerations. But he also said:

She talks about a moving truck. They don't have that much stuff; I moved them myself. A utility bill? All those things under my name and I pay those bills myself. If [the neighbour] has spoken to them - she could have spoken to them. They are living there; they can see them.

My brother-in-law had a second child in 12 years – not a planned pregnancy. They needed the parents there. [The trip to India] couldn't be planned out.

I asked about the size of the house for two people, and the Landlord said:

The seller of the house from whom I bought, was an old, single, divorced woman. She lived in that property multiple years before she got divorced.

She submitted it both ways as well. They're living in the property. 11 months since she left the property. I'm still using it for my own use, and I provided you with documents and reasonable explanations. Besides being there, they don't....

I asked the Landlord if the in-laws go outside much. He said:

Yes, they do. The neighbour has seen them. There's no statement from him, but he has seen them. The person has seen us, as well. [The Tenant] could have provided more documentation.

This is a person saying 'I have not seen somebody there' – is that the whole proof? They are not there all the time. I am giving evidence as to why it's rational. They don't speak English, they don't drive.

Now [the Tenant] is now saying she wanted to delay with starting notice, and she said she could lose. Part of my submissions are that she claimed that I was lying

about my in-laws moving in, and I'm not.

She also had sent me an email: I had literally pleaded with her. I have a young family, too. No tenancy is forever. I said let's work together, find something – take time. I didn't want stress to everybody. She said you would have to sell the property. Not by what she says, but her actions, if she didn't want to leave, if she was so sure I was lying, why not fight it. The whole thing, if you see the chronology. I said let's take the time to work together. She didn't want to work together. Her actions show how serious she was about fighting this.

The Parties agreed that the Tenant did not attend her prior hearing for which she had applied to dispute the Two Month Notice .

I offered the Parties an opportunity to make any last statements before we ended the hearing. The Tenant stated:

I'd like to add that it sounds like now since May, [the Landlord] may have his in-laws there, but even if that is the case, which I don't believe, but even if that is the case, it is not within a reasonable time frame from the eviction. A reasonable time frame is about three months - this is almost a year.

My stance is that my family is the most important thing. This is about [the Landlord] doesn't admit to the rules of tenancy. I was the very first tenant. But he didn't follow through with his obligations following serving me with the notice.

The Landlord said:

They moved in – the in-laws – have been living there. We had an unfortunate, not planned pregnancy. There was no profit on my end for 11 months. How can they say they have not seen anybody? It's a plan to bother and harass me.

Look at the whole scenario, I met her myself, and introduced myself; she knew what we looked like. They're claiming that their own opinion, they saw people on the property Her testimony is not correct. That should be ignored. Why would they say that?

Also, we have to provide proof that they were staying inside. Because it was very hot. It's based on hypotheticals, not confirmed proof. These are hypotheticals or 'I don't think they live there'.

Analysis

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

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 51 (2) of the Act states that a landlord must pay the tenant an amount that is equivalent to 12 times the monthly rent payable under the tenancy agreement if:

- (a) 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
- (b) 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.

In the Two Month Notice dated June 3, 2021, the Landlord indicated that a close family member intends to occupy the rental unit. The Landlord indicated that it would be his mother and father in-law living in the residential property.

The Tenant gave evidence that instead of being occupied by the Landlord or a family member the rental unit was left empty, and she says there is still insufficient evidence that someone is living there now. The Tenant provided documentary evidence by way email communications from a neighbour saying she had not seen anyone living there.

However, the Landlord also noted occasions in which he has mowed the lawn and done other landscaping activities at the residential property; he said he did not see anyone at the neighbour's house, either. He said that the neighbour is away from the neighbourhood for most days, which I infer means that she is not there to see anyone, anyway.

The Tenant did not direct me to photographs through a window of an empty house or any evidence from another neighbour on the street to corroborate the person who

emailed her. I find on a balance of probabilities that the Landlord's evidence is more persuasive than is that of the Tenant. I find that the Tenant has not provided sufficient evidence to meet her burden of proof in this matter. I find that the Landlord's explanation and proof of the in-laws' trip to India during the last year for an emergency health issue of a family member explains why they would not have been seen from November 2021 through April 2022.

I find that the reason for the five-month gap in using the residential property for the stated purpose of the Two Month Notice is an extenuating factor, pursuant to section 51 (3) of the Act.

Section 51 (3) of the Act states:

51 (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

(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.

Policy Guideline #50 clarifies an extenuating circumstance in this regard, as follows:

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:

- 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.

I accept the Landlord's evidence that his in-laws did not have many belongings to move in, and that the Landlord moved them himself in September 2021. I find that the banking documents submitted by the Landlord corroborates the Landlord's assertion that the in-laws are living there. The names on the bank statements were the same as the names on the airline tickets. I find that the Landlord's version of events rings true and is internally consistent. As such, I find that the Tenant did not provide sufficient evidence to make her case on a balance of probabilities. Therefore, I dismiss the Tenant's Application wholly without leave to reapply, pursuant to section 62 of the Act.

Conclusion

The Tenant is unsuccessful in her Application, as she provided insufficient evidence to prove her claim on a balance of probabilities. Rather, the Landlord provided sufficient evidence to establish that his in-laws moved into the residential property in September 2021, and have lived there ever since, aside from a five-month trip to India for a family emergency.

The Tenant's Application is dismissed wholly without leave to reapply.

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 15, 2022

Residential Tenancy Branch