



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties agree that the landlord listed on this application for dispute resolution is an agent for the owner of the subject rental property (the "agent"). Neither party disputed that both the agent and the owner meet the definition of landlord under the *Act*.

The tenant, the agent and the owner of the subject rental property attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. An interpreter for the agent and the owner attended the hearing and affirmed to translate to the best of her ability from the English language to the Cantonese language and from the Cantonese language to the English language.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The tenant testified that the agent was served with her application for dispute resolution via registered mail on November 25, 2022. The agent testified that she received the tenant's application for dispute resolution but could not recall on what date. I find that the agent was deemed served with the above package on November 30, 2021, five days after its registered mailing, in accordance with section 89 of the *Act*.

The agent testified that the tenant was served with the agent's evidence package via registered mail on May 31, 2022. The tenant confirmed receipt of the above package but did not state on what date. I find that the tenant was deemed served with the above package on June 5, 2022, 15 clear days before this hearing, in accordance with section 88 of the *Act* and Rule 3.15 of the Residential Tenancy Branch Rules of Procedure (the "Rules").

Both parties agree that the tenant personally served the owner with her evidence on June 13, 2022, at the subject rental property, 7 clear days before this hearing.

Rule 3.14 of the Rules states:

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

I find that since the agent did not receive the tenants' evidence package 14 clear days before this hearing, all evidence submitted by the tenant, is excluded from consideration, except for the Two Month Notice. I find that neither party is prejudiced by admittance of the Two Month Notice for consideration because both parties agreed that they had a copy more than 14 days before this hearing. I find that to accept the tenant's other evidence for consideration would prejudice the agent who was not provided with a full opportunity to respond to that evidence.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for compensation from the agent related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the agent, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and agent's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2017 and ended on June 5, 2021. Monthly rent in the amount of \$2,950.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the agent and the owner are sisters.

Both parties agree that the agent served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on April 25, 2021 via email and leaving a copy in the tenant's mailbox. The tenant confirmed receipt of the Two Month Notice on April 25, 2021. The Two Month Notice states an effective date of June 30, 2021 and that the reason for ending the tenancy is that the rental unit will be occupied by the owner or the owner's spouse.

The "landlord" listed on the Two Month Notice is the owner of the subject rental property. The Two Month Notice is signed by the agent.

The tenant's application for dispute resolution states:

[The landlord] is a representative to the Owner/Landlord. The owner of the property is [the landlord's] sister who lives in China. The owner had mailed being delivered to [the subject rental property]. Tenancy was ended due to landlord moving in. Then it changed to Mother was moving in. However, the sister/agent

[landlord] lives there with family and her mother-in-law after extensive renovations took place. Tenancy was not ended in good faith. The story kept changing to who was moving in after notice.

The tenant is seeking 12 months' rent compensation pursuant to section 51 of the *Act*.

The owner submitted a signed letter which states:

...I wanted to take the house back and live with my mother (who lives in China alone). So my sister [the agent], who has authorization and was representing me, gave notice to our tenant [name redacted for privacy] for her to move out.

[The tenant] moved out in June, 2021, my husband [S.] found out there was leaks, and molds found in some windows (pictures underneath), and the walls are a little bit scratched up so my husband moved in right the way to fix them; and since [the tenant] has been there for a while, we want to paint some area of the house too.

[S.] moved into the house, and stayed there since June, but I don't want our daughter to live with a lot of dust and dirt from mold repair and painting; me and my daughter didn't move there completely until repairs were done in July. Unfortunately my mom was afraid to travel because of increased concern about Covid....

The agent testified that the original plan was for herself, the owner and their children to move into the subject rental property with their mother to help take care of their mother. The agent testified that their mother does not want to leave China yet and is still there. The agent testified that the owner, the owner's husband and their daughter moved into the subject rental property in July of 2021. The agent testified that she and her four children moved into the subject rental property, which has four bedrooms, in early November 2021. The agent testified that she currently lives at the subject rental property with her four children, the owner, the owner's husband and their daughter.

In support of the owner's submission that she has resided at the subject rental property since July of 2021, the landlord entered into evidence:

- photographs of her children playing in the backyard of the subject rental property. The owner testified that the photographs were taken in July of 2021.

- Photographs of the owner's birthday party taken at the subject rental property. The owner testified that the photographs were taken in January of 2022.
- Photograph of the owner and friends enjoying hotpot at the subject rental property. The owner testified that the photographs were taken in August or September of 2021.
- BC Hydro invoice from June 22, 2021 to August 20, 2021 in the owner's name at the subject rental property.
- Fortis BC invoice from July 15, 2021 to August 16, 2021 in the owner's name at the subject rental property.
- A signed letter from a neighbour of the subject rental property which states:

My name is [K.Y.] and I reside with my husband and children at [neighbouring address to subject rental property]. Our family has lived at this residence since December 2018. I am writing to confirm that that [sic] I have known [the owner's husband, the owner] and their daughter since the summer of 2021, when they moved to the house directly across the street from us at [neighbouring address to subject rental property].

[D.] and I met [the owner's husband and the owner] on an evening in July of 2021; I do not recall the exact date. We were walking our family dog while they were outside on their front lawn. The four of us became fast friends as [the owner's husband] and [D.] both work in the construction industry and our children were of similar age. Since then, we have hosted playdates and dinner parties at each other's homes. Below are a couple of photos of one such dinner party at our home in the fall of 2021.

[Photographs of a dinner party included]

I recently learned that [the owner's husband] and [the owner's] living status was being questioned by the residency board and felt inclined to write a statement to confirm that they have been our neighbours since July 2021....

The tenant testified that she does not believe that the owner and the agent are being truthful about who lives at the subject rental property. The tenant testified that she believes an elderly couple lives at the subject rental property with a couple with kids.

The tenant testified that she is in the renovation business. The tenant testified that the renovation done at the subject rental property included the installation of recessed lighting which can be seen in the birthday party photograph entered into evidence by the agent. The tenant testified that adding recessed lighting is a major renovation that could not be completed in the month before the owner and her daughter allegedly moved in. The tenant testified that the agent also added a new door and threshold which is also a major renovation. The tenant testified that ordering a new custom door takes 8-12 weeks.

The tenant testified that she and her husband periodically drove by the subject rental property and saw that the subject rental property was empty until October of 2021. The tenant testified that the power bill entered into evidence by the agent shows low usage which shows that no one was living there. The BC Hydro bill states that for the period of June 22, 2021 to August 20, 2021 there was an "80% decrease of 38 kWh per day in electricity used compared to the same period last year".

The Fortis BC bill provides a comparison to the previous year for the same building period. For August 2020 the average daily usage was 0.17 GJ and for August 2021 the average daily usage was 0.08 GJ.

The tenant testified that she never sees the owner's car at the subject rental property.

The tenant testified that the Fortis and BC hydro bills in the name of the owner do not mean anything because the bills were in the owner's name during the tenancy.

The agent testified that major renovations were not completed at the subject rental property and that the recessed lighting was installed in ½ a day. The agent testified that in addition to the recessed lighting they treated the mold and re-painted. The agent testified that her husband and the owner's husband are both in construction and were able to do the work themselves quickly.

The agent testified that the front door was not changed right away and that they changed it after they moved in, and that this was not a major renovation.

Analysis

Section 51 of the *Act* states:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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

(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.

(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 the case may be, from

(a)accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b)using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline # 50 states:

Reasonable Period

A reasonable period is an amount of time that is fairly required for the landlord to start doing what they planned. Generally, this means taking steps to accomplish the purpose for ending the tenancy or using it for that purpose as soon as possible, or as soon as the circumstances permit.

It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in on the 15th of the next month, then a reasonable period to start using the rental unit would be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Accomplishing the Purpose/Using the Rental Unit

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy.

A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy. A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

The parties provided conflicting testimony regarding when and who moved into the subject rental property. The agent and the owner entered into evidence photographs

which show the owner and her husband in the subject rental property. The tenant confirmed that the birthday party photographs are in the subject rental property.

The agent and owner also entered into evidence a signed witness statement which states that the owner, the owner's husband and their daughter have resided in the subject rental property from at least July 2021 forward, when the neighbours' met the owner and family. I found the witness statement to be clear and that it appeared to be an honest recollection of events. Based on the witness statement, the photographs of the owner and her family in and outside the subject rental property and the BC Hydro and Fortis BC invoices, I find that the agent and her husband and child have resided in the subject rental property since July 2021.

I note that while the low gas and electricity consumption was not explained in the hearing by the owner and the agent, I find that the low consumption does not outweigh, in particular, the witness statement of the neighbour to which I place significant confidence and weight.

I accept the tenant's testimony that the Fortis BC and BC Hydro bills were always in the owner's name and as such I place less weight on their inclusion in the evidence. As stated above, the signed witness statement of the neighbour of the subject rental property was highly weighted.

I accept the owner's undisputed testimony that at the end of the tenancy the owner found some mild mold that required remediation and that she and her daughter waited until July 2021 to move into the subject rental property while minor repairs and renovations were completed. As noted in PG #50, small renovations such as changing the carpets are allowed to be completed before the landlord moved in, I find that the renovations and repairs described by the owner and agent were similar in extent to the change of carpets.

I find that given the original effective date of the Two Month Notice was June 30, 2021 and some minor renovations were required, it was reasonable for the owner and her daughter to move into the subject rental property in July of 2021. I find that painting and the installation of recessed lighting and a new door do not qualify as major renovations.

I find that the fact that the tenant served the tenant's late evidence to the owner in person at the subject rental property on June 13, 2022 supports the owner and agent's testimony that the owner currently still resides at the subject rental property; otherwise,

the chance the owner would be at the subject rental property when the tenant attended to serve the owner or agent would have been minimal. I find on a balance of probabilities that the owner has resided at the subject rental property since July of 2021 and continues to reside at the subject rental property. When and whether the agent moved in after that, is of no consequence.

As I have determined that the owner accomplished, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy and that the subject rental property has been occupied by the owner for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, I find that the landlord did not breach section 51(2) of the *Act*. I therefore dismiss the tenant's application for 12 months' rent, without leave to reapply.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the agent, pursuant to section 72 of the *Act*.

Conclusion

I dismiss the tenant's application for dispute resolution without leave to reapply.

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 22, 2022

Residential Tenancy Branch