Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity to be heard, to present evidence and to make submissions. The Parties confirmed that no recording devices were being used for the hearing and that the evidence packages of each Party had been received.

Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started on March 1, 2021 and ended on August 1, 2021. Rent of $1,250.00 was payable on the first day of each year. At the outset of the tenancy the Landlord collected $625.00 as a security deposit, and this had not yet been dealt with. The Landlord gave the Tenants a notice to end tenancy for landlord's use dated May 24, 2021 (the "Notice"). The Tenants moved out in accordance with the Notice. The Notice provides that the landlord or a close family member of the landlord will occupy the unit.

The Tenant states that the unit was either rented or sold and that the Landlord is not occupying the unit as stated in the Notice. The Tenant states that they saw persons coming and going from the unit immediately after their move out of the unit and that the person referred to below as the 3rd party informed the Tenant that they were not the Landlord and that they moved into the unit.

The Landlord states that prior to serving the Notice the Landlord intended to create a joint occupancy of the unit between the Landlord and a 3rd Party with a partner and three children. The Landlord states that the Landlord and the 3rd Party entered into a tenancy agreement on August 8, 2021 for monthly rent of $1,250.00. The tenancy agreement split the utilities between the Landlord and the 3rd Party such that it resulted in a lower rental income for the Landlord from the previous rental income. The Landlord states that although the Landlord resided and worked elsewhere the Landlord wanted to return to the unit on weekends and holidays to conduct a business venture with the 3rd Party who was previously the Landlord's employee.

The Landlord states that the tenancy agreement allows the Landlord to come and go at will and provides that the Landlord would share a bathroom and kitchen with the 3rd Party. The 3rd party continues to reside at the unit. The Landlord states that since October 2021 the Landlord has not been at the unit due to COVID transmission concerns. The Landlord states that the 3rd party was not comfortable with the Landlord being in the unit at the time. The Landlord states that it was not worth the Landlord coming and staying on days off work because of these concerns and because the Landlord was coming from a high transmission risk area. The Landlord states that they stayed at the unit for two periods in August 2021 in between work and only returned in November 2021 to remove a boat of the Landlord's. The Landlord states that on this date the Landlord did not enter the unit or have contact with the 3rd party or its family of 4. The Landlord states that the intended business between the Landlord and the 3rd party also fell through because of COVID as it was too risky to operate during this time. The Landlord states that the 3rd party now operates the business out of the unit.

The Landlord argues that the situation with COVID is an extenuating circumstance that prevented the Landlord from occupying the unit as intended. The Landlord confirms that no medical documentation was provided in relation to medical issues for the Landlord or the 3rd party with the risk of COVID transmission.

The Landlord argues that since the Landlord entered into a tenancy agreement that has the Landlord sharing the kitchen and bathroom the Act does not apply to the arrangement. The Landlord provides copies of three previous court decisions and specifically refers to the Residential Tenancy Branch (the "RTB") decision #6327 (February 1, 2019) mentioned in Blouin v. Stamp, 2011 BCSC 411 ("Blouin v. Stamp") as supporting the Landlord's argument.

The Tenant claims compensation of $15,000.00 or twelve times the monthly rent of $1,250.00.

Analysis

Section 51(2) of the Act provides that 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 the landlord or purchaser, 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.

Section 51(3) of the Act provides that 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.

Section 64(2) of the Act provides that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part. While the Landlord referred to the RTB decision contained in Blouin v. Stamp, the Landlord did not provide a copy of this RTB decision, and I am unable therefore to assess the application of that decision to the current facts. Further I consider that while the evidence of the shared occupancy arrangement between the Landlord and the 3rd party indicates that this relationship would not be subject to the Act's provisions, the fact of the financial or commercial aspect of the shared arrangement or use of the unit remains relevant in determining whether the Landlord occupied the unit as required under the Act. As set out in paragraphs 59 and 60 of Blouin v. Stamp:

> I agree with Mr. Stamp that the Arbitrator's Decision was a rational one and in keeping with the objectives of the Act. It cannot be said that it is other than "transparent, intelligible and justified" (Vavilov at para. 15). This is not simply a homeowner renting out a "room" to an occasional person. In my view, it cannot be said that renting out this very separate and private space to AirBnb clients, inherently a commercial endeavor, is occupation of that space by a landlord "as a residence for his own purposes": Schuld at para. 17. Indeed, I agree with Mr. Stamp that any other interpretation would allow a landlord to terminate a tenancy, take over only a small or insignificant portion of the space and then re-rent the remainder at far greater rent amounts. Providing such a "loophole" for landlords would clearly be contrary to the remedial objectives of the Act and the protections intended to be afforded to tenants by the Act: Berry and Kloet at para. 23 and Schuld at para. 17.

Policy Guideline 2A also sets out as follows: 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. A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see Blouin v. Stamp, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months.

While the evidence is that the Landlord did not receive more rental income for the shared arrangement, the allowance of such an arrangement could similarly provide a "loophole" for landlords to enter into shared arrangements with greater rental income while only occupying a minimal portion of the unit. I note that the Landlord gave no evidence that they had use and access to the other bedrooms used by the 3rd Party and there is no evidence of the terms of the tenancy with the 3rd Party after the Landlord discontinued the shared arrangement as late as November 2021.

Given the Landlord's evidence that the unit was immediately occupied after the effective date of the Notice for a period of no more than 4 months under the shared use of the unit that generated rental income, that the unit was occupied during this time for mixed commercial and residential purposes and that the 3rd Party alone occupied the unit thereafter I find on a balance of probabilities that the Landlord did not use the unit for the stated purpose on the Notice for at least 6 months. The argument that COVID stopped the Landlord from sharing the occupation of the unit for 6 months is not relevant and cannot be seen as an extenuating circumstance that stopped the Landlord from occupying the unit as required under the Act.

I note that in addition to Blouin v. Stamp the other two decisions provided by the Landlord are under different legislation, one being in Ontario and the other under the old provisions of the Act and both made without the benefit of the recent BC Supreme Court decisions on the application of section 51 of the Act.

As the Landlord has not met its burden of proving occupation or extenuating circumstances, I find that the Tenants are entitled to **$15,000.00** as the compensation equivalent to 12 months rent ($1,250.00 x 12). As the Tenants have been successful with their claim, I find that the Tenants are also entitled to recovery of the **$100.00** filing fee for a total entitlement of **$15,100.00.**

Conclusion

I grant the Tenants an order under Section 67 of the Act for **$15,100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 13, 2022

Residential Tenancy Branch