



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, made on September 23, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order granting the return of the filing fee.

The Tenant G.E. and the Landlord T.T. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order for money owed or compensation under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 12, 2014. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,226.00 which was due to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$562.50. The tenancy ended on June 30, 2021 in compliance with a Two Month Notice to End Tenancy for Landlord's Use of the property.

The Tenant is seeking monetary compensation in the amount of \$14,712.00 which is equivalent to twelve times the amount of monthly rent. The parties testified and agreed that the Landlords served the Tenant with a Two Month Notice to End Tenancy as the Landlord intended to occupy the rental unit. The Tenant stated that they vacated the rental unit in compliance with the Two Month Notice.

The Tenant stated that after the tenancy, they attended the rental property to visit a friend who's suite is located above the rental unit they had once occupied. The Tenant stated that the friend knows the Landlords' family and had knowledge that the Landlord's niece had moved into the rental unit following the end of the tenancy.

The Tenant stated that the rental unit is easily viewable from the exterior of the building and that on several occasions, the Tenant was able to see a female inside the rental unit. The Tenant stated that they know where the Landlord's primary address is, and have driven past his house to see his vehicle in the driveway. Furthermore, the Tenant viewed their old parking spot at the rental property which is occupied by a vehicle that does not belong to the Landlord. The Tenant provided pictures in support.

The Tenant stated that the Landlord had previously complained to them about the low rent that they were paying. As such, the Tenant is claiming that the Landlord did not follow through on the intended purpose of the Two Month Notice by occupying the rental unit. Instead, the Tenant feels as though the Landlord has re-rented the rental unit to his niece.

The Tenant requested to summons their friend who lives above the rental unit, who could attest to the fact that the Landlord's niece occupies the rental unit. The Tenant stated that their friend did not want to become involved given the relation to the Landlord's family.

The Landlord's Agent stated that the Landlord has moved into the rental unit as intended according to the Two Month Notice. The Landlord's Agent referred to the

change in address on the Landlord's Driver's License, utility bills, owner occupied insurance policy, bank statements, and credit card invoices, which all demonstrate the change in the Landlord's address following the end of the tenancy.

The Landlord stated that he is experiencing marital difficulties at home, therefore, he decided it was best to take possession of the rental unit for his own use. The Landlord confirmed that he moved his niece and her friend into the rental unit as his roommates. The Landlord stated that he occupies the rental unit fulltime aside from a period of 15 days in which he returned to the family home to care for his three children, while their mother had a medical issue and was in Hospital.

The Landlord stated that he has rented an additional parking spot that the rental property to accommodate his and his niece's vehicle. The Landlord stated that the Tenant has attend the rental unit on several occasions to find the Landlord is residing at the rental unit, however, the Tenant is only referring to other visits in which he was not at home.

The Landlord had his niece C.M. attend the hearing who testified in support of the Landlord residing in the rental unit with her. C.M. stated that she was in need of accommodations and that the Landlord offered her a bedroom in the rental unit as a roommate. C.M. stated that the Landlord is her uncle and is not charging her rent.

Analysis

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

According to Section 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.

According to the Residential Policy Guideline 2A requires the Landlord to Act in good faith;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on

the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

The Tenant is claiming compensation in the amount of \$14,712.00 which represents twelve months of rent as the Tenant feels as though the Landlord has not occupied the rental unit as was intended based on the Two Month Notice.

During the hearing, the Tenant has requested to summons of a witness to attend the hearing

According to the Residential Tenancy Branch Policy Guideline 15 The decision to issue a summons is at the discretion of the director. In determining whether or not to issue the summons the director will consider the following points:

1. The information sought from the summons must be relevant to the proceedings. A summons cannot be used to go on a fishing expedition for information without any clear relevance to the issue at hand or to seek information that is suspected to exist.
2. The summons must not be an abuse of process and cannot be used to harass or annoy a party.
3. The summons cannot be used to interfere with a privilege recognized by law. For example a summons would not be issued to a landlord's lawyer for the purpose of obtaining evidence respecting legal advice given to the landlord.
4. A summons cannot be issued where the witness in question resides outside of British Columbia.

In this case, the Tenant wished to have her friend summoned to testify to the fact that the Landlord's niece resides in the rental unit. I find that the summons is not necessary given the Landlord, and his niece both confirmed during the hearing, that the niece does occupy the rental unit along with the Landlord. I find that the Tenant provided insufficient evidence or testimony to demonstrate that the witness that they are seeking to summons would provide any additional information. As such, I declined to summons the Tenant's witness.

I accept that the Landlord's niece occupies the rental unit. I find that the Landlord has provided sufficient evidence to demonstrate that it is more likely than not, that he also resides in the rental unit and that he and his niece are roommates. I find that there is no particular section in the Act which prevents a Landlord from occupying a rental unit with

a roommate. As such, I dismiss the Tenant's Application as I find that the Landlord has achieved the intended purpose of the Two Month Notice.

Conclusion

The Landlord has provided sufficient evidence to demonstrate that they have achieved the intended purpose of the Two Month Notice. The Tenant's Application is therefore dismissed 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: July 5, 2022

Residential Tenancy Branch