Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Applicant claims the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order for compensation pursuant to s. 51(2) equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- return of their filing fee under s. 72.

A.B. appeared as the Applicant. The Applicant was represented by N.U. as his counsel. A.L. and A.L. appeared as the Respondents. The Respondents were represented by J.T. as their counsel.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Is the Applicant entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?
2) Is the Applicant entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The tenancy began in July 2013.
- The Tenants vacated the rental unit on July 5, 2021.
- Rent of $847.00 was payable on the first day of each month.

I was advised by Respondents counsel that the Respondents entered a contract of purchase and sale in March 2021 and took possession of the rental unit on July 5, 2021. I was advised by the parties that the subject property is a duplex in which the Applicant was a tenant in one of the two rental units.

At the request of the Respondents, the previous owner issued a Two-Month Notice to End Tenancy signed on April 16, 2021 (the "Two-Month Notice"). The Two-Month Notice was put into evidence and lists as its effective date June 30, 2021. I am told by Respondent's counsel that Respondents agreed to extend the move-out date to July 5, 2021 at the request of the Applicant.

The Respondent's evidence includes affidavits from the Respondents and their realtor R.D.. The Respondent A.L.'s affidavit says that he moved to British Columbia from elsewhere in Canada in early 2021 and that he occupied the rental unit after purchasing the property. The affidavit discusses how he and the co-Respondent A.L. began a relationship sometime in 2020 and that they both went through a protracted separation such that they decided that they would maintain separate residences.

Respondent's counsel advised that when the Respondents took possession of the rental unit on July 5, 2021, they found it to be in a state of disrepair. All three of the Respondents' affidavits speak to the presence of mould within the rental unit. It was argued by counsel that the rental unit was not ready to be occupied and required the replacement of flooring, trim, and paint. The Respondents evidence includes photographs of the rental unit after they took possession on July 5, 2021.

Respondent's counsel says that the Respondent A.L. moved some of his essential belongings into the rental unit on July 5, 2021 but that he was unable to move all his

furniture due to the condition of the rental unit. I am advised by the Respondents that the bedroom had laminate flooring that was unaffected by the mould present elsewhere. A.L.'s affidavit goes on to describe how he is a tradesperson and that undertook the repairs to the rental unit himself after work and on weekends. Respondent's counsel referred me to various pieces of mail and invoices showing A.L.'s name with the rental unit's address as proof that he occupied the rental unit.

Applicant's counsel argued that A.L. resided with his partner and that he undertook renovations at the rental unit with the purpose of re-renting. It was argued that the renovations were more extensive than was mentioned by Respondent's counsel. I was directed to photographs of the rental unit after the renovations indicating that flooring, trim, painting, and kitchen cabinets were replaced.

I am told by Applicant's counsel that the adjacent rental unit in the duplex was vacant when the Two-Month Notice was issued and that the Applicant was targeted. Applicant's counsel further argued that there was no proof that the Respondent A.L. moved into the rental unit and argued that the hydro bill showed below average consumption.

The Respondents acknowledge that the rental unit was temporarily rented to someone else on January 6, 2022. A copy of the tenancy agreement was put into evidence by the Respondents showing it had been dated for January 7, 2022 but was scratched out to January 6, 2022. It was signed by the new tenant on January 6, 2022. A.L.'s affidavit indicates he rented the unit temporarily as he and A.L. went on a vacation for several months.

A.L. says he rented the unit out of concern of leaving the space unoccupied given the level of "harassment and surveillance" from the Applicant and his mother. Both of the Respondents' affidavits allege harassment by the Applicant and his mother. Respondent's counsel advised that A.L. returned to live within the rental unit at the end of the short-term tenancy.

The Applicant's evidence includes an affidavit from his mother S.B. with attached exhibits showing the advertisement for the rental unit and email correspondence regarding the rental. The emails are authored by M.T. and are a back and forth on scheduling a viewing of the rental unit. It is unclear from S.B.'s affidavit on whether she posed as M.T. or whether M.T. is an individual who responded to the advertisement.

Applicant's counsel argued that the Respondent suggested January 1, 2022 occupancy would be acceptable in reference to the emails.

The Applicant's evidence also includes various photographs of the rental unit and the residence of A.L.. It was argued that A.L.'s vehicle was not at the rental unit but was at his partner's place instead.

Analysis

The Applicant seeks compensation under s. 51(2) of the *Act* equivalent to 12 times the monthly rent payable under the tenancy agreement.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

In this instance, I find that the effective date of the Two-Month Notice was altered by consent of the Respondents to July 5, 2022 based on the request of the Applicant.

A.L. provided affirmed affidavit evidence that he moved into the rental unit on July 5, 2021, that he was unable to move all his belongings at that time due to the state of the rental unit, and that he undertook repairs and renovations over time while occupying the rental unit. The supporting utility invoices show hydro was connected for A.L. on July 5, 2021 and began getting mail at the rental unit.

The Applicant's argued that A.L. did not move into the rental unit or was alternatively living in his partner's house over the relevant period. However, there is no evidence to support this argument. I have a series of photographs on various dates showing A.L.'s vehicle at his partner's house. That is not helpful evidence. It is no surprise that A.L. would be visiting his partner's house. Section 51(2) does not require that someone always occupy a rental unit for six months. It is entirely reasonable to expect individuals to travel, visit others, and live life as one normally would, which may entail spending evenings or overnights at a partner's house. It was explained that the Respondents both

went through separations and wished to maintain separate residences, which is an entirely reasonable explanation for how they choose to organize their lives.

The Applicant's argued that the renovations were extensive and got in the way of occupancy. With respect, I am not convinced that this is the case. I have reviewed the photographs provided to me by the parties. I would agree with the Respondents that the rental unit required remedial work given the state of the trim and flooring. The later photographs show it had been painted, new cabinets, and new flooring. The Respondent's affirmed evidence is that he lived at the property and undertook the repairs after work and on the weekends. I have been provided no evidence to indicate that Respondent was lying in his evidence. Given the type and extent of the work undertaken, it is entirely plausible that the Respondent lived in the rental unit and undertook the renovations himself.

Applicant's counsel argues that electricity usage was below average, thus confirming that A.L. did not occupy the space. However, it is unclear to me how Applicant's counsel could come to that conclusion on what constituted average consumption. The invoices cover a range from July 5, 2021 to January 12, 2022. Consumption was low in the summer and higher in the fall and winter. One would expect that electrical consumption would be lower in the summer months and higher in the winter months given the shorter days and colder temperatures. I put no weight on the Applicant's argument.

All this returns to the fact that I have the affirmed evidence of A.L. that he moved into the rental unit on July 5, 2021. The Applicant raises arguments and has suspicions but provides no evidence directly contradicting the Respondent's affirmed evidence. Based on A.L.'s affirmed evidence and the supporting utility invoices, I find that the Respondents have established that A.L. moved into the rental unit on July 5, 2021.

With respect to the six-month period, the requirement is that the rental unit be occupied for at least six months. In this instance, the Respondents admit that the rental unit was rented to new tenants on January 6, 2022.

There was an allusion that the Respondents advertising during the six-month period was relevant. It is not. The question is one of fact: was the rental unit occupied, was it occupied within a reasonable period, and was it occupied for six months. An individual can advertise a rental unit so long as they continue to occupy it.

I am directed to emails in the Applicant's evidence in which M.T. responds to the advertisement. It was suggested to me by the Applicant's counsel that January 1, 2022 occupancy was acceptable for the Respondents. I have reviewed those emails. M.T. sends an email on December 24, 2021 enquiring whether a move in date of January 1, 2022 would work. At no point in the correspondence that follows does the responding party indicate January 1, 2022 would be an acceptable move-in date. In any event, the point is moot. The rental unit was not rented on January 1, 2022. Based on the evidence before me, the Respondents re-rented the unit on January 6, 2022. The evidence before me shows the Respondents rented the unit on January 6, 2022 and that he continued to occupy it until January 5, 2022. That is six months after the Respondent A.L. occupied the space.

I find that the Respondents have proven on a balance of probabilities that A.L. moved into the rental unit on July 5, 2021 and that he occupied the rental unit until January 5, 2022, which is 6 months. Accordingly, I find that the Applicant is not entitled to compensation under s. 51(2) of the *Act*. The Applicant's claim is dismissed without leave to reapply.

Conclusion

The Applicant's claim under s. 51(2) of the *Act* is dismissed without leave to reapply.

The Applicant was unsuccessful in his application. I find he is not entitled to the return of his filing fee. His application under s. 72 of the *Act* is 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: September 22, 2022

Residential Tenancy Branch