



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 by way of conference call concerning an application made by the tenant seeking monetary compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and the landlord was assisted by an Interpreter. The landlord's Interpreter was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language and from the landlord's Native language to the English language, to the best of the Interpreter's skill and ability. The tenant and the landlord each gave affirmed testimony and were given the opportunity to question each other.

The tenant submitted that all evidence has been exchanged, which was not disputed by the landlord, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established good faith intent when issuing a Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2021 and ended on January 1, 2022. Rent in the amount of \$900.00 was payable on the 31st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00 as well as a pet damage deposit in the amount of \$350.00, both of which have been returned to the

tenant in full. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property, a portion of which has been provided by both parties for this hearing. It is dated October 30, 2021 and contains an effective date of vacancy of January 1, 2022. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse AND the father or mother of the landlord or landlord's spouse. The tenant did not pay rent for December, 2021 as compensation required by law.

The landlord also testified that no one moved into the rental unit. The landlord intended for her God Parents and herself to move in. The landlord's God Parents were going to open a restaurant in the area, having sold a motel in Manitoba, but after January 15, 2022 the motel didn't sell.

The landlord had no plans to sell, but once the plans fell through the landlord sold the rental unit to her God Parents. The landlord has provided a Statement of Adjustments for the sale with a closing and possession date of March 1, 2022.

The tenant testified that the rental unit is in a very small town, and the tenant drives past the rental home on her way to work. On February 1, 2022 the tenant noticed vehicles parked in the driveway, and received a text from new tenants saying that they had moved onto the property. The tenant went to the rental unit and the new tenant said they found the unit because they knew the owner's husband, and that 3 young people had just moved in. A co-worker of the tenant lives in one of the buildings on the property who also witnessed new tenants and multiple people in the rental unit.

Analysis

Where a landlord serves a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to establish that the rental unit was used for the purpose contained in that Notice within a reasonable time after the effective date of the Notice and for at least 6 months.

Also, a landlord may not end a tenancy with such a notice for God Parents to occupy it. Therefore, having given the Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord would have to move into the rental unit within a reasonable time after the effective date of the Notice and remain there for at least 6 months. I accept

that the landlord intended to move in with the God Parents, but neither the landlord nor the parents of the landlord moved in or occupied the rental unit for at least 6 months. Instead, the landlord sold the rental unit.

The *Residential Tenancy Act* states that if a landlord fails to use the rental unit for the purpose contained in the Notice, the landlord must pay compensation to the tenant in the amount of 12 times the monthly rent. In the event that I find that extenuating circumstances prevented the landlord from accomplishing that stated purpose, I may excuse the landlord from failing to accomplish that stated purpose. In this case, I am not satisfied that changing her mind and selling the rental unit to her God Parents is not an extenuating circumstance.

In the circumstances, I find that the landlord has not demonstrated good faith intent or that the landlord occupied the rental unit for at least 6 months, and the tenant is entitled to compensation in the amount of \$10,800.00. Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$10,900.00. The tenant must serve the order upon the landlord, and may file the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$10,900.00.

This order is final and binding and may be enforced.

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 26, 2022

Residential Tenancy Branch