Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT FFT

Introduction

The applicant seeks compensation pursuant to section 51(2) and section 72(1) of the *Residential Tenancy Act,* SBC 2002, c. 78, as amended (the "Act").

A dispute resolution hearing was convened on September 28, 2022 and attending the hearing was the applicant, their legal counsel, the respondent, and the respondent's spouse. The parties, with the exception of legal counsel, were affirmed. No service issues were raised.

Issues

The issues to be decided are as follows:

1. Whether the applicant is entitled to compensation under section 51(2) of the Act.
2. Whether the applicant is entitled to recovery of the application filing fee under section 72(1) of the Act.

Background and Evidence

The applicant was a tenant in a residential tenancy from August 14, 2017 until April 24, 2021. They resided in a basement suite within a residential home. The applicant's landlord (who is not a party to this dispute) sold the residential home and, at the direction of the respondent purchaser, issued a Two Month Notice to End Tenancy For Landlord's Use of Property (the "Notice"). The Notice was served on January 25, 2021, and the Notice indicated stated that the tenancy would end on March 31, 2021. On page two of the Notice the reason for ending the tenancy was that "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

After some conversations, the applicant ended up staying in the basement suite (also referred to as the “rental unit” in this decision) until April 24, 2021.

The applicant argued that the respondent never moved into the rental unit. The testified that they did not observe different cars parked in front of the house, and thus they surmised that the respondent had never moved in. There were, they testified, “no major changes.” Submitted into evidence were several photographs depicting the exterior of the residential property and parked vehicles adjacent thereto. The applicant testified that they observed Asians or Koreans coming and going from the residential property.

The respondent and their spouse testified that they occupied the rental unit for the required six-month period. Indeed, the respondent stated that they have occupied the rental unit ever since and currently reside in the property. That said, the respondent acknowledged that they did occasionally travel back and forth between Surrey and Calgary. The respondent explained that the Asians or Koreans to which the applicant referred were tenants renting out the main portion of the residential home and were not tenants in the rental unit. The “main tenants” are “ethnic,” the respondent remarked.

Both parties spent a portion of their testimony describing the make and models of the vehicles parked outside the property and what types of vehicles they do and do not own. The applicant testified that they are “familiar with the [respondent’s] cars” and that they “only once” saw a Mercedes parked outside; the respondent explained that neither they nor their family own a Mercedes. Rather, they own three Hondas.

Further, both parties spent considerable time testifying about events that occurred before the respondent and their spouse moved into the rental. They also testified about less-than-pleasant conversations when the applicant was vacating the rental unit and the respondent was moving in, or preparing for moving in.

Applicant’s counsel made brief submissions regarding the reasonable period. The respondent’s spouse testified that they moved into the rental unit within a couple of days of the applicant leaving. Keys were acquired on April 27, 2021 and they moved into the rental unit on May 1.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Further, it should be noted that only relevant evidence was considered in reaching this decision. And only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced and considered herein.

The applicant brings this claim under section 51(2) of the Act. The Notice was served on January 25, 2021. As such, it is the version of section 51(2) of the Act that was in force on that date that shall apply in this dispute. This is important to note because the current version of section 51(2) of the Act places the onus on a respondent landlord or purchaser to prove occupancy, versus previous versions which place the onus on proving lack of occupancy on the applicant (as is the case in this dispute).

Section 51(2) of the Act (in force between May 30, 2020 and February 28, 2021; accessible at www.canlii.org/en/bc/laws/stat/sbc-2002-c-78/167843/sbc-2002-c-78.html) reads as follows:

> 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.

Taking into careful consideration all of the oral and documentary evidence before me, I am not persuaded on a balance of probabilities that the applicant has proven either that steps were not taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or, that the respondent did not use the rental unit for the stated purpose for at least a six month duration, beginning within a reasonable period after the effective date of the notice.

The effective date of the Notice was March 31, 2021. Yet, it would be unreasonable to start the clock on any reasonable period and the six-month period until the applicant vacated the rental unit on April 24, 2021. By all accounts the respondent moved into the rental unit about a week later; this is not an unreasonable period.

Other than a few pictures of various vehicles parked outside the retal property—vehicles for which the applicant did not conclusively prove were owned by someone other than the respondent who was occupying the rental—there is no evidence presented by the applicant, for me to find that the respondent did *not* occupy the rental unit.

Nor is there any persuasive evidence that the respondent did not reside in the rental unit. And, certainly, individuals are free to travel between cities on a frequent basis for various personal and business purposes. There is nothing in evidence for me to find that, simply because the respondent may have travelled to and from Calgary, the respondent did not occupy the rental unit during the relevant period.

In short, I am not persuaded that the respondent did not (A) move into the rental unit within a reasonable period, and (B) occupy the rental unit between May 1 and October 31, 2021. Last, as a brief aside, that the respondent has recently listed the property for sale has no bearing on this claim; the listing occurred well after the expiration of the six-month period.

The applicant's claim for compensation under section 51(2) of the Act is dismissed without leave to reapply. Accordingly, the applicant's claim to recover the cost of the filing fee under section 71(2) of the Act is also dismissed, without leave to reapply.

Conclusion

The application is hereby 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 Act.

Dated: September 29, 2022

Residential Tenancy Branch