



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 ("Application") under the *Residential Tenancy Act* ("Act"), for compensation of \$12,228.00 from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property; and to recover the \$100.00 cost of his Application filing fee.

The Tenant, the Landlord, A.T., an agent for the Landlord, J.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. One witness for the Landlord, A.T., was also present and testified. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. I note, however, that both Parties were late in serving the other Party with their respective Notices and evidence. However, at the Agent's proposal, the Landlord was ready to proceed, and the Tenant also agreed that he did not want to delay the hearing further; therefore, we proceeded with the hearing, despite the Parties not having been served with sufficient time before the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they

confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on June 1, 2016, and ran to May 31, 2017, and then operated on a month-to-month basis in a suite of this multi-unit building. They agreed that over the years, the rent grew to \$1,035.00 until the end of the tenancy. The monthly rent was due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$455.00, and no pet damage deposit. The Parties agreed that the Tenant vacated the rental unit on June 30, 2022.

The Parties agreed that the Landlord had served the Tenant with a Two Month Notice to End the Tenancy for Landlord's Use ("Two Month Notice"). This was signed and dated April 30, 2022, and it has the rental unit address. The Two Month Notice was served in person on April 30, 2022, with an effective vacancy date of June 30, 2022. It was served on the grounds that the rental unit will be occupied by the father or mother of the Landlord or the Landlord's spouse.

The Tenant explained his claim, as follows:

I seek compensation for the fact that this wasn't done in good faith. It's not going to be used for Landlord's use. A contractor explained it was being rented out for significantly more than what I was paying. Someone is living in the suite. Three other suites were evicted on the same day for Landlord's use, but they were just rented out – not for Landlord's use.

The Agent said:

He's not led any evidence that other tenants were evicted for Landlord's use. The Landlord states that the one shareholder's father is moving in. He has sold his own property and now has a BC driver's license with [the rental unit] address. He is in the process of moving in.

The Landlord submitted evidence of his father having obtained a temporary British Columbia driver's license with the address of the rental unit. The date of issue on this document was September 14, 2022, or two and a half months after the rental unit was vacated by the Tenant.

The Tenant provided photographs of the rental unit after he moved out showing that it was being fully renovated, with kitchen walls stripped back to the drywall, leaving plumbing pipe connections in the wall. The photo of the living room shows it filled with building materials and a shop vacuum and other construction equipment. The photographs show that doors were removed from closets and rooms throughout the unit. A new floor was being installed in the bedroom.

The Tenant also submitted listings advertising an apartment for rent that the Tenant says is his former unit. The street address for the apartment is the same as that of the residential property, although a unit number is not provided. The advertisement indicates that it is a large, furnished one bedroom/one bathroom unit of 750 square feet. The Landlord is charging \$2,250.00 for this suite, which the Tenant noted is \$1,215.00 more than what he was paying. I could not find a date on the listing, although there is a notation saying: "Posted about a month ago". I note the Tenant submitted these advertisements to the RTB on August 24, 2022; therefore, I find it more likely than not that "about a month ago" was at the end of July 2022 or a month after the Tenant moved out.

In the Landlord's written statements, it says the Landlord is a family corporation pursuant to the Act, and that the Landlord intends for the father of the sole shareholder of the residential property to occupy the suite formerly rented to the Tenant. It also states: "The Landlord desired to effect some renovations to that suite prior to the intended occupancy of the suite, those renovations are now complete."

The Landlord also addressed the validity of the Two Month Notice; however, as the Tenant has not disputed the Two Month Notice, this is not an issue before me.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 51 (2) of the Act states that a landlord must pay the tenant an amount that is equivalent to 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.

In the Two Month Notice dated April 30, 2022, the Landlord indicated that the Landlord or a close family member, intends to occupy the rental unit. In the hearing, the Landlord's father was in attendance and explained that he is in the process of moving into the rental unit. He said he wanted to move in earlier, but he had bad news about his mother, which detained him in another province.

The Tenant gave evidence that instead of being occupied by the Landlord or a family member the rental unit was renovated and then put up for rent for a much higher amount than the Tenant was paying.

The Tenant provided photographs of the rental unit being extensively renovated after he moved out. He also provided documentary evidence of online listings showing a rental unit in the residential property as being available for rent. I note that the date the Tenant implied the advertisement was listed was approximately one month after his tenancy ended. I infer this means the renovations were quickly completed after the tenancy ended. However, the Landlord's father has indicated that he is just now in the process of moving in, although, he said he had bad personal news that delayed him from moving to British Columbia sooner.

The Tenant has not directed me to documentary evidence that supports his assertion that someone other than the Landlord's father is moving into the rental unit. I find that the online advertisements did not prove that the Tenant's rental unit was the suite that was being re-rented. The Parties agreed that it was a multi-unit dwelling, and as such, I give the advertisement limited weight in my considerations.

In contrast, the Landlord's father testified that he is moving in now, which is a little less than four months after the tenancy ended. He also provided a copy of a new driver's license with the complete rental unit address.

Based on the evidence before me overall, I find that the Tenant has not provided sufficient evidence to prove his claim on a balance of probabilities. I, therefore, dismiss the Tenant's Application wholly, pursuant to section 62 of the Act.

Conclusion

The Tenant is unsuccessful in his Application, as he failed to provide sufficient evidence to prove his claim on a balance of probabilities. The Tenant's claims are dismissed wholly without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 20, 2022

Residential Tenancy Branch