



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FF

Introduction

On January 30, 2022, the Tenants made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 51 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for September 15, 2022. This hearing was adjourned as per my Interim Decision dated September 16, 2022. The final, reconvened hearing was then set down for October 17, 2022 at 9:30 AM.

Both Tenants attended the final, reconvened hearing. L.D. attended later as a witness for the Tenants. The Landlord attended the final, reconvened hearing as well, with S.D. attending as counsel for the Landlord. B.F. and F.D. attended later as witnesses for the Landlord. At the outset of the final, reconvened hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of S.D., provided a solemn affirmation.

Service of documents was discussed at the original hearing. All documentary evidence was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 14, 2017, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on July 4, 2021, after being served with the Notice. Rent was established at \$1,332.50 per month and was due on the first day of each month. A security deposit of \$650.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that the Tenants were served the Notice sometime prior to the end of May 2021. The reason the Landlord checked off on the Notice was because "The rental 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." As well, the Landlord checked off the box indicating that it would specifically be "The landlord or the landlord's spouse" that would be occupying the rental unit. The effective end date of the tenancy was noted as August 1, 2021, on the Notice. A copy of this Notice was submitted as documentary evidence for consideration.

At the original hearing, S.D. reiterated that the effective date of the Notice was August 1, 2021, but the Tenants gave their 10 days' written notice to vacate early on June 23, 2021, with an effective date of July 4, 2021. However, the Landlord had not made plans to move into the rental unit any earlier than August 1, 2021. He referenced documentary evidence of address changes, online purchases, and witness statements to demonstrate that the Landlord did move in to occupy the rental unit in August 2021. He submitted that the Landlord kept the blinds closed due to a health issue and sensitivity to light. As well, he stated that much of the Tenants' texts of inactivity at the rental unit was before the effective date of the Notice.

The Landlord advised that she started moving into the rental unit on August 1, 2021, and had a contractor come in to conduct minor repairs. She moved in and slept on a blow-up mattress, and did not have a lot of furniture to start with. She also acknowledged that she was stricken with pneumonia, and this explained the appearance of inactivity at the rental unit.

Tenant M.W. advised that they had people texting them regarding the rental unit being vacant. As well, he stated that the Tenants drove by daily, and saw no signs of occupation by the Landlord. He testified that the Landlord's son informed him on June 8, 2021, that the Landlord would not be moving in, but would be using the rental unit as an office. He pointed out his own observations, which he believed to be discrepancies in the Landlord's documentary evidence, and he questioned why the Landlord only submitted pictures of the office and not any of the rest of the rental unit. In addition, he submitted that utilities were always in the Landlord's name during the tenancy, so the Landlord never had to change the address on those bills.

At the reconvened hearing, witness B.F. testified that he helped the Landlord move into the rental unit around the middle to the end of August 2021. He stated that she did not have a substantial amount of furniture, and mostly had "basic living things." He confirmed that she was living in the rental unit when he first moved her in, and he noted that she was sleeping on an inflatable mattress. He submitted that he visited the rental unit at least a dozen times from August 2021, he confirmed that the Landlord did not have any other residences, and he stated that the Landlord was fully occupying the rental unit. As well, he stated that he provided the Landlord with transportation many times, to and from the rental unit, as the Landlord's truck was in disrepair.

The Tenants did not have any questions for B.F.

Witness F.D. advised that she works from home, online, and would have virtual meetings, at least three times per week, with the Landlord from August 2021 onwards. She testified that she would see the Landlord, over these virtual meetings, in the rental unit, and she confirmed that the Landlord was living there because she could obviously observe this. She stated that the first online meeting would have been at the beginning of August 2021, and there were many follow-up calls, including at nighttime, where the Landlord would be in the rental unit.

M.W. questioned F.D., and she submitted that the first time she visited the rental unit was several years ago, and that the last time she visited the rental unit was several years ago as well.

S.D. advised that the Landlord moved into the rental unit after August 1, 2021, and used the property for the stated purpose on the Notice. He submitted that the Landlord closed the blinds due to her medical condition and the busyness of the road, and he stated that the absence of the Landlord's vehicle in the driveway was due to it having mechanical issues. He noted that the Landlord changed her address on forms and that she made purchases for the rental unit. As well, he referenced statements from witness, which corroborate the Landlord's position of occupying the rental unit within a reasonable period of time after the effective date of the Notice. Finally, he reiterated that many of the texts that the Tenants submitted as documentary evidence were observations prior to the effective date of the Notice.

The Landlord advised that she informed the Tenants that her intention was to move into the rental unit, and she stated that one reason was to be closer to her friends. She confirmed that she started moving in on August 1, 2021, by herself, and was living there that day. She testified that she acquired more furniture after this date. However, she could not recall what day specifically B.F. had helped her move. She submitted that she suffered from a number of health issues and personal challenges prior to, and after, moving into the rental unit.

M.W. went through the Landlord's documentary evidence and pointed to discrepancies that he believed contradicted the Landlord's, and witnesses', submissions about the Landlord moving in on or around August 1, 2021. As well, he made suggestions pertaining to the Tenants' belief and doubts that the Landlord moved in to occupy the rental unit.

Witness L.D. advised that she lived around the corner from the rental unit, and that her and/or her husband would pass the rental unit approximately four to six times per week after August 1, 2021. She stated that the property was “virtually empty” for months. She would occasionally see a silver car there, but it would never be parked overnight. After approximately three months, she then noted activity on the property. Prior to that, she would mostly observe the Landlord’s son in the driveway at different times of the day. She stated that she would watch for moving trucks, but she never saw one.

S.D. questioned L.D., and she stated that it was her belief that the lack of any movement of blinds and the lack of any vehicles on the property for a significant length of time would indicate to her that the rental unit was unoccupied.

The Landlord noted that L.D.’s testimony about not seeing vehicles on the property contradicted the documentary evidence where some vehicles were noted on occasion. She reiterated that her truck was being repaired and that she was sick, so this would account for the inactivity.

M.W. advised that the times that vehicles were seen on the property were long weekends. He submitted that the Landlord would visit and stay over, but then leave shortly after.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord’s right to end a tenancy in respect of a rental unit when the Landlord, or a close family member of the Landlord, intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing the evidence before me, I am satisfied that this was a valid Notice.

With respect to the Tenants' claim for twelve-months' compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was received prior to or on May 31, 2021 and Section 51 of the Act changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

51 (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.

With respect to this situation, I also find it important to note that Policy Guideline # 50 states that "The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2)."

At the time the Notice was served, the Landlord advised that it was her intention to move into the rental unit and that the Notice was served in good faith. Regardless, the good faith requirement ended once the Notice was accepted by the Tenants and after they gave up vacant possession of the rental unit. What I have to consider now is

whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months, within a reasonable period of time, after the effective date of the Notice. Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

Moreover, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, I have the Landlord's solemnly affirmed testimony that she moved into the rental unit on or around August 1, 2021, and that she occupied the rental unit after this date. As well, she provided documentary evidence to corroborate this position, and why the property appeared to be vacant. Furthermore, she had witnesses provide their own solemnly affirmed testimony corroborating that the Landlord occupied the rental unit in August 2021.

Conversely, I have the M.W.'s solemnly affirmed testimony that it is their belief that the Landlord never occupied the rental unit within a reasonable period of time after the effective date of the Notice, his statements pertaining to the Landlord's documentary evidence where he pointed to believed contradictions, and their witness' solemnly affirmed testimony that it was her belief that the Landlord did not move in and occupy the rental unit on or around August 1, 2021.

In considering the submissions by the parties, on a balance of probabilities, I find that the Landlord's documentary evidence and witnesses more closely and consistently substantiate her solemnly affirmed testimony that she moved into and occupied the rental unit on or around August 1, 2021. I acknowledge M.W.'s submissions with respect to inconsistencies that they believe demonstrate that the Landlord did not occupy the rental unit after the effective date of the Notice; however, I find that most of these were more in the nature of either being suggestive, or mere speculation, and I find that they carry less weight than the totality of the Landlord's evidence provided. As such, I prefer the Landlord's evidence on the whole.

Given that I am satisfied that the Landlord, more likely than not, moved into the rental unit within a reasonable period of time after the effective date of the Notice and occupied it for a period of at least six months, I find that the Tenants are not entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*.

As the Tenants were not successful in their claim, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution 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: October 28, 2022

Residential Tenancy Branch