Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing dealt with the tenant's application, filed on February 28, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $19,013.76 for compensation because the landlord ended the tenancy and has not complied with the *Act* or used the rental unit for the stated purpose, pursuant to section 51.

"Landlord LK" did not attend this hearing, which lasted approximately 55 minutes from 1:30 p.m. to 2:25 p.m. Landlord SS ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord and the tenant provided their names and spelling. They both provided their email addresses for me to send this decision to both parties after the hearing.

The landlord confirmed that she co-owns the rental unit with landlord LK. She provided the rental unit address. She stated that she had permission to speak on behalf of landlord LK (collectively "landlords") at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord and the tenant both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to

them or act as their agent or advocate. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties were given multiple opportunities at the beginning and end of this hearing to settle. Both parties discussed settlement during this hearing but declined to settle. Both parties confirmed that they were ready to proceed with this hearing and asked that I make a decision regarding the tenant's application.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. The tenant confirmed receipt of the landlords' evidence. In accordance with sections 88 and 89 of the *Act*, I find that both landlords were duly served with the tenant's application and the tenant was duly served with the landlords' evidence.

I cautioned the tenant that if I dismissed his application without leave to reapply, he would receive $0. The tenant repeatedly affirmed that he was prepared for the above consequence if that was my decision.

I cautioned the landlord that if I granted the tenant's full application, that I would issue a monetary order for $19,013.76 against the landlords, enforceable in Court. The landlord repeatedly affirmed that the landlords were prepared for the above consequence if that was my decision.

The tenant confirmed receipt of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 15, 2020 ("2 Month Notice"). In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlords' 2 Month Notice.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2003 and ended on April 1, 2020. Monthly rent of $1,584.48 was payable on the first day of each month. A security deposit of $550.00 was paid by the tenant and the landlords returned the full deposit to the tenant. A written tenancy agreement was signed by both parties.

Both parties agreed to the following facts. The tenant vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the notice was March 31, 2020. The reason indicated on the 2 Month Notice was:

- *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).*

The tenant confirmed that he seeks compensation under section 51(2) of the *Act* for twelve months of rent reimbursement of $1,584.48, totaling $19,013.76. The tenant stated that because the landlords did not use the rental unit for the purpose on the 2 Month Notice, he is entitled to compensation. The landlord confirmed that the landlords dispute the tenant's application.

The tenant testified regarding the following facts. The landlords did not fulfill their obligation to move into the rental unit, as they said they would. The tenant received the 2 Month Notice in January 2020 to move out on April 1, 2020. The tenant received the notice in proper time. The tenant asked the lanldrod for a reference. The tenant moved one floor down in the same apartment building, after he vacated the rental unit. The landlord gave the tenant a couple extra days to move out. When the landlord found out that the tenant was staying in the same building, her behaviour changed. The landlord said that she did not know if landlord LK would move into the rental unit. This should have been addressed by the landlords before the 2 Month Notice was issued to the tenant. The tenant was still renting the landlord's parking spot. The landlord told the tenant that landlord LK was living with the landlord and not staying at the rental unit. The landlord said that landlord LK was out of a job and would be in Nova Scotia for some time. Later, the tenant saw an advertisement online for re-rental of the unit. Neither the landlords, nor their kids or spouses, moved into the rental unit. The landlords should have completed due diligence before. The landlord claims that she needed emotional support from landlord LK, but the rental unit is located a short distance away from where the landlord was living. The landlords' obligations were not fulfilled, even though the tenant agrees that the landlord may have had a tough time.

The landlord testified regarding the following facts. The tenant was an “amazing tenant” during his whole tenancy. The landlord was going through a hard time and her dad was hospitalized in February because he had cancer and needed an operation. Her business partner, landlord LK, was going through a divorce and was in Montreal, so it was hard for her to get support. The landlord sent evidence to her property management company in November, including emails, showing that landlord LK wanted to move into the rental unit. The landlord told landlord LK that if she was coming from Montreal, then she needed to know ahead of time whether she was moving into the rental unit. Landlord LK said that she did not want to live at the rental unit when she saw it because it was “run down” and the sink was lifting up from mold. The landlord's father passed away, she was going through grief, and landlord LK was going through a divorce. The landlord could not get out of bed and the best thing for her was for landlord LK to live with her. The landlord acknowledges that the rental unit is only a block down the street from where the landlord lives. But the landlord's mental state was not good, she was confused, and she did not know what to do. She told her property management company to re-rent the rental unit, so they advertised it for $2,200.00 per month for rent. The landlord would have given the rental unit back to the tenant at the same rent amount and she was hoping he would take back the place. But the landlord did not ask he tenant to move back in or revoke the 2 Month Notice. The landlord’s mind was not straight, and she should have asked the tenant to move back in.

The landlord stated the following facts. The landlord sent a text message to the tenant telling him that landlord LK may not move in. It was the landlord’s intention for landlord LK to move into the rental unit because of her divorce. The landlord provided revenue statements showing her yearly income and money. The landlord’s intention was not to renovate or sell the rental unit. The hydro was put in landlord LK's name because the landlord needed someone with her. The rental unit was re-rented to new a tenant, as of July 1, 2020. The new rent for the new tenant was $1,900.00 per month but a property management fee of $120.00 per month was deducted, so the landlord was only receiving $1,780.00 per month for the rental unit. The property management company wanted the $2,200.00 rent per month, but the landlord said to rent it out for whatever amount and she was agreeable to the $1,900.00 lower amount. The landlord could not deal with the rental unit, so she had to pay a property management fee. The landlord agrees that it was a higher rent than what the tenant was paying of 1,584.48. She provided a signed tenancy agreement from the new tenant, who is still living at the rental unit. The new tenant moved in on July 3, 2020. The rent for the rental unit and the new tenant would have increased in 2021 by 2% and she is not sure whether it was increased in 2022. The rental unit was not used and no one was living there between April 1, 2020 and July 1, 2020. She renovated the rental unit, purchased new

appliances, replaced the carpet, and dealt with the walls. The landlord had to get strata approval to renovate, which took some time.

The tenant stated the following in response. He agrees with the landlord that the rental unit was "run down," as it was built in 2002 and he moved in 2003. There was wear and tear at the rental unit, including scratches on the walls and stained carpets. The landlord redid the bathroom and bought new appliances. The tenant agrees that it was an old apartment and it needed work. The landlord's property management company posted the rental unit for $2,200.00 per month, but the landlord chose less rent of $1,900.00 per month. The landlord chose to hire a property management company, which she did not have to do. The landlord went from asking for under $1,600.00 per month in rent from the tenant, to $2,200.00 per month in rent. The tenant had to find a new place in a rental market where he had to pay $2,245.00 per month, which included $2,100.00 for rent and additional parking and storage costs, which were not included in rent. The tenant appreciates that the landlord was going through a tough time. The landlord said that she needed support, but landlord LK went back to Nova Scotia. The landlord fully renovated the rental unit, so that she could ask for $2,200.00 per month in rent. The landlord did not use the rental unit for the purpose on the 2 Month Notice. The landlord has been paying the rental unit mortgage for 17 years, so there probably is not much left to pay.

Analysis

I find that I have jurisdiction to hear this application, as the tenant filed this application on February 28, 2022, within the two-year limitation period of this tenancy ending on April 1, 2020, pursuant to section 60 of the *Act*.

Burden of Proof

During this hearing, I informed the tenant, that, as the applicant, he was required to present his application and evidence. I notified the landlord, that it was the landlords' burden of proof, to show that they used the rental unit for the reason indicated on the 2 Month Notice issued to the tenant.

The landlord confirmed receipt of the tenant's application package, which includes a four-page document from the RTB entitled "Notice of Dispute Resolution Proceeding" ("NODRP").

The NODRP contains the phone number and access code to call into the hearing, and states the following at the top of page 2, in part (emphasis in original):

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The following RTB *Rules of Procedure* are applicable and state, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

This hearing lasted 55 minutes, so the landlord had ample time and multiple opportunities to present the landlords' submissions, evidence, and responses. During this hearing, I repeatedly asked the landlord if she had any other submissions and evidence to present, regarding the tenant's application.

Findings

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the landlords do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

> *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.*

It is undisputed that the tenant vacated the rental unit on April 1, 2020, pursuant to the 2 Month Notice. It is undisputed that neither the landlords, nor their close family members, moved into the rental unit, after the tenant vacated. It is undisputed that the landlords issued the 2 Month Notice for landlord LK, who is a landlord and co-owner and qualifies under the notice, to move into the rental unit. It is undisputed that landlord LK did not move into the rental unit.

Accordingly, I find that neither the landlords, nor any close family members of the landlord (parent, spouse or child or parent or child of that individual's spouse), moved into the rental unit after the tenant vacated on April 1, 2020, as required by the 2 Month Notice.

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

> *E. EXTENUATING CIRCUMSTANCES*
> *An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:*
> - *A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.*
> - *A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.*
> - *A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.*
>
> *The following are probably not extenuating circumstances:*
> - *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
> - *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.*

Residential Tenancy Policy Guideline 2A states the following, in part:

> *E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE*
>
> *Residential Tenancy Act*
>
> *A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:*
> *• accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy,*
> *• or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.*

> *The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.*
>
> *Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.*

I am required to consider the above section 51(3) of the *Act*, regardless of whether it is raised by any party during this hearing. I raised the above issue to both parties during this hearing.

I find that the landlords failed to show extenuating circumstances prevented them from using the rental unit for the purpose in the 2 Month Notice.

It is undisputed that the landlords completed renovations to the rental unit after the tenant vacated on April 1, 2020, and then re-rented the unit to a new tenant on July 1, 2020, who continues to reside there. It is undisputed that the landlords advertised the rental unit at a higher rent of $2,200.00 per month, and they received a higher rent of $1,900.00 per month, which increased in 2021 and potentially in 2022. Even with a reduction for a management fee of $120.00, that is the landlords' choice to hire a management company, which is not required. This is a significantly higher rent than what the tenant was paying at $1,584.48, so I find that the landlords made a profit from re-renting the unit to a new tenant. The landlords provided written statements showing that they made a profit from the new tenant, as compared to the tenant.

While I accept that the landlord was going through a difficult time with her father's illness and passing, and landlord LK was going through a divorce, I do not find these to be sufficient extenuating circumstances. Landlord LK did not attend this hearing to provide affirmed testimony, nor did she provide a written statement as evidence for this hearing. The landlords did not provide hospital or medical records of the landlord's father's illness or hospital stay or written evidence of landlord LK's divorce.

The landlord testified that she was hoping that the tenant would move back into the rental unit at the same rent, but she never asked him to do so. The landlords did not revoke the 2 Month Notice or tell the tenant that it was rescinded, to provide the tenant with an opportunity to move back. The landlord also testified that landlord LK did not like the rental unit and did not want to live there because it was too old and not renovated. Even though the landlords renovated the rental unit, landlord LK still did not move into it at a later date. Further, the rental unit and the landlord's unit are one block

away, so the landlord could have received the support of landlord LK living at the rental unit in close proximity, rather than moving in with the landlord.

Therefore, I find that the landlord breached section 51(2)(b) of the *Act*, as the landlords or their close family members did not occupy the rental unit for at least six months after the tenants vacated on January 15, 2020. I find that the landlords failed to show extenuating circumstances prevented them from using the rental unit for the reason indicated on the 2 Month Notice.

Accordingly, I find that the tenant is entitled to twelve times the monthly rent of $1,584.48, as compensation under section 51 of the *Act*, which totals $19,013.76, from the landlords.

Conclusion

I issue a monetary Order in the tenants' favour in the total amount of $19,013.76, against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 25, 2022

Residential Tenancy Branch