



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant confirms that although they believe that the Landlord chose to delay the provision of its evidence to the Tenant having provided it to the Tenants two weeks prior to the hearing, the Tenants have had sufficient time to review the Landlord’s evidence and are prepared to proceed. The Landlord raised no issue in relation to receipt of the Tenants’ evidence.

Issue(s) to be Decided

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on June 15, 2020 and ended on June 15, 2021. Rent of \$4,000.00 was payable on the first day of each month. The security and pet deposits have been dealt with. The Landlord gave the Tenants a two month notice to end tenancy for landlord's use dated February 28, 2021 (the "Notice"). The Notice sets out an effective date of June 15, 2021 and that the unit is to be occupied by the Landlord or a close family member of the Landlord.

The Tenant states that the Landlord did not live in the unit.

The Landlord states that they used the unit as an extended home office. The Landlord states that the unit is an 8-minute walk from the Landlord's residence. The Landlord states that all their work is remote and that as the Landlord's girlfriend was also working from home at the Landlord's residence the Landlord needed separate workspace that their residence did not allow for. The Landlord states that their residence does not have a dedicated office space. The Landlord states that prior to the Notice they worked at home for about a year and that prior to this they worked at an office across the street from the unit. The Landlord states that they are a part owner of the office space across the street but ceased employment and work at this office as a result of a business decision. The Landlord states that they personally paid for the furnishings and utilities for the use as an extended home office. The Landlord states that they also use the unit to store the Landlord's artwork and used as extra space for a visitor at one point as there is only one bedroom at their residence. The Landlord states that the unit was also used to hold a party due to the limited space at the residence.

The Landlord refers to case law as support for the Landlord's entitlement to use the office as an extension of their home. The Landlord argues that in *Koyanagi v. Lewis*, 2021 BCSC 2062 ("Koyanagi"), the landlord used a basement suite as a home office for a family member and that this was found to fulfill the requirements for the occupation of

that previous rental unit as part of the residence. The Landlord argues in its written submission that:

At no point during those 13.5 months did the Respondent use the Property to run any of the Businesses. In other words, the Property was not used as a type of commercial storefront, or a space where customers would be welcome to come and go. Nor, was the Property used as a permanent workplace for anyone other than the Respondent.

The Landlord also refers to a Residential Tenancy Branch (the “RTB”) decision where the landlord was found to be occupying a unit as a residence down the street from the landlord’s residence as the landlord used it for storage of residential items and for family member stays while the landlord was selling their residence.

The Tenants argue that Koyanagi specifically considers an office in the home and that the “home” is key. The Tenant argues that the unit is not part of the Landlord’s home and is not a “home” office. The Tenant argues that the Landlord occupied the unit solely as an office. The Tenant argues that in this case to there is no simultaneous occupation of both the residence and the unit as a home. The Tenant argues that there was no transition of the office and was only temporarily occupied as an office. The Tenant states that office rental space in the area of the unit costs less than a residential rental. The Tenant argues that the unit is several blocks away from the Landlord’s residence and not close by as in a basement suite in a residence.

The Landlord argues that the availability of other office space is irrelevant where there is perfectly good unit already available to the Landlord. The Landlord states that they have not claimed any office expenses from the use of the unit either as business or personal deductions. The Landlord states that after occupying the unit for 13 months the unit was rented in August 2022 at the same rental rate as the Tenants. The Landlord states that they are now working out of their residence and that since April

2022 the girlfriend no longer resides with the Landlord at the residence. The Landlord states that the unit had been listed for sale in June or July 2022 but that it did not sell and was rented in August 2022.

Analysis

Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(6)(f) of the Act provides that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use. Policy guideline # 2A provides that since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v. Niu*, 2019 BCSC 949). The result is that a landlord can end a tenancy under sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space. Policy Guideline #50 further provides as follows:

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit to a non-residential use instead.

The Landlord’s argument is that the unit was not occupied as a residence but as an extension of their residence as a “home office”. The Landlord refers to Koyanagi as supporting the allowable use of the unit as an extended home office. However, the

facts of that case is that the unit was inside the landlord's home leaving it distinguishable from the facts at hand where the office is completely separate and some distance from the Landlord's residence. I quote the finding in Koyanagi that "The term "home office" itself encapsulates the fact that it is an office that exists within a person's living space."

The Landlord's evidence is that they maintained their residence elsewhere. The Landlord's evidence is that the unit was furnished without any movement of the Landlord's furnishings or office furnishings and supplies from the residence to the unit. These facts are distinguishable from the RTB case referred to by the Landlord as in that case the unit was used as an extension of the landlord's residence, with the landlord's furniture and other belongings from the residence was being used in the rental unit for a period of time where the landlord's residence was being staged for sale.

While it can be accepted that the unit was not used for commercial purposes, I note that the unit was identified at the entrance as one of the businesses run by the Landlord. There is no evidence that the unit was used for the Landlord's personal mail or that any mail going to their residence was re-directed from the residence to the unit. The Landlord gave evidence that no personal deductions for a home office was made in relation to the unit. The use of the unit as a one-time overnight stay for a guest would be a reasonable and incidental to its use as an office as the unit also included a bedroom. Storage of art does not make the unit a residence as storage could be an incidental use of office space as well. Holding a party at the unit could also be considered as incidental use of the unit as an office.

For the above reasons I find that the Landlord has not substantiated that they occupied the unit as a residence and find on a balance of probabilities that the unit was used solely for an office outside the residence that I consider to be a non-residential purpose. As the Act provides for the conversion of a rental unit to non-residential purposes, as

the Landlord did not end the tenancy for this reason, I find that the Landlord may not now substitute this reason for the reason stated in the Notice.

Section 51(2) of the Act provides that 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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 51(3) of the Act provides that 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 applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

As the Landlord has been found not to have occupied the unit as a residence or as part of their living space and as there is no evidence of any extenuating circumstances that prevented the Landlord from occupying the unit for the purpose stated in the Notice, I find that the Tenants are entitled to compensation of **\$48,000.00** (the equivalent of \$4,000.00 x 12 months). As the Tenants have been successful, I find that the Tenants are also entitled to recovery of the filing fee for a total entitlement of **\$48,100.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$48,100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: November 16, 2022

Residential Tenancy Branch