



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 51(2) for compensation equivalent to 12 times the monthly rent payable under the tenancy agreement; and
- return of her filing fee pursuant to s. 72.

Y.O. appeared as the Tenant. B.S. appeared as the Landlord. P.M. appeared as the Landlord’s witness.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Is the Tenant entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement?
- 2) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on January 1, 2019.
- The Landlord took back possession of the rental unit on April 1, 2020.
- Rent of \$1,500.00 was due on the first day of each month.
- A security deposit of \$750.00 was paid by the Tenant.

I was provided a copy of the tenancy agreement by the Tenant. I am advised by the parties that the rental unit is a lower unit within a single detached home in which the Landlord also rents the upper unit.

The Landlord testified that a Two-Month Notice to End Tenancy was issued on the basis that her daughter would move into the rental unit. The Tenant provides a copy of the Two-Month Notice to End Tenancy, showing it was signed on January 21, 2020 and issued on the basis of occupation by the Landlord or a close family member (the “Two-Month Notice”).

The Landlord testified that her daughter moved into the rental unit sometime in April 2020 due to the rental unit’s proximity to the university she was attending. The Landlord says that the rental unit had to be painted prior to her daughter moving in. I am told by the Landlord that her daughter remained in the rental unit until December 2020 and returned home afterwards as her classes were online in any event.

The Landlord testified that the upper unit tenant took rented the lower unit beginning in January 2021. The Landlord’s evidence includes a screenshot from a BC Hydro account which indicates that someone took “possession of this location on Oct 20, 2020” and an associated account number corresponding with the upper tenant’s account, displaying the rental unit address.

The Tenant disputes that the daughter moved into the rental unit. The Tenant testified that she went to the property after vacating on certain occasions to get her mail and says she never saw the daughter on those occasions.

The Tenant directs me to two photographs in her evidence, which she says are from the upper tenant's social media account and both show the subject rental unit. The first is dated January 5, 2020 and has a description written in French. The Tenant advises that the message reads: "The basement for the children is almost finished. One wall left to paint and commercial kitchen to be installed tomorrow. So excited. Photos to come." The Tenant says that the photograph is of the rental unit. The second photo I am told by the Tenant is dated May 11, 2020 and indicates, in French, "The girls camping in the basement living room before the new furniture arrives".

The Landlord called the upper tenant as a witness, who testified that she witnessed the daughter living in the basement and that she moved-in sometime in mid-to-late April 2020. The witness further testified that she boards students in her rental unit, that she had two students at the time as her rental unit is a three-bedroom suite, and that one of the students was friends with the Landlord's daughter.

On cross examination, the Tenant asked if the upper tenant had asked her co-tenant to take a picture of the basement suite in December, which the upper tenant denied. The upper tenant testified that the written section on the photographs provided by the Tenant were in relation to another picture she had on her social media account, implying that the evidence provided by the Tenant was fabricated.

The Landlord reasserted that her daughter occupied the basement rental unit and indicates that one of the photographs provided by the Tenant shows her daughter and niece with one of the students boarded with the upper tenant. I am further directed to a series of witness statements provided by the Landlord attesting to witnessing her daughter residing within the rental unit.

The Tenant emphasized that reemphasized that the photograph does not show the Landlord's daughter and says she recognizes the individuals to be the students living with the upper tenant.

Though not directly relevant to this dispute, both parties spoke to a certain extent of a dispute between the Tenant and the upper tenant, with the Landlord's evidence including an allegation that one of the lower occupants assaulted the upper tenant.

Analysis

The Tenant seeks compensation equivalent to 12 times the monthly rent payable under the tenancy agreement.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

In this instance, there is no dispute that the Tenant received the Two-Month Notice and that was served on the basis that a close family member was to occupy the rental unit.

The Landlord testified that her daughter moved into the rental unit. However, the daughter was not called as a witness, nor did the daughter provide a written statement attesting to her living within the rental unit. I was provided with no university records to indicate that the daughter was enrolled at all or that she was attending beginning in April 2020. I have a series of statements from individuals associated with the upstairs tenant who attest to seeing the rental unit occupied by the Landlord's daughter.

Counterposing this are the photographs provided by the Tenant, which she says are from the upper tenant's Facebook page with a description that would lead one to conclude the space was to be taken over by her. According to the Landlord, the upper tenant did take on the lower rental unit, though in January 2021.

With respect to the photographs, I found that the upper tenant was defensive and combative with the Tenant when she was conducting her cross-examination. She testified that the evidence was fabricated and implied the Tenant had done so. I place little weight in the upper tenant's evidence, which appears to have been coloured to a certain extent by the conflict with the Tenant. I have been provided no evidence to suggest that the photographs are frauds. The Landlord did not advance that the photographs were altered in her submissions, instead indicating that one of the photographs showed her daughter and niece, as well as student that boarded with the upper tenant. I would note that two of the individuals cannot be identified at all as their faces are covered.

Little were made by way of submissions by the Landlord with respect to the witness statements, such as who they were, when they attended the property, or how they would have cause to know who the Landlord's daughter was. I place little weight in these statements because this information is missing. There is a statement from someone who claims to be the daughter's friend, that the daughter lived there in 2020, and that they visited the daughter in the summer of 2020. However, that statement does not establish when the daughter moved in, how long she was there, or when she moved out.

Under s. 51(2) of the *Act*, the Landlord bears the burden of proving her daughter moved into the rental unit, did so within a reasonable period of the effective date of the notice, and occupied the rental unit for at least six months. Under the circumstances, I am not persuaded that the Landlord has done so. As mentioned above, there is no direct evidence from the daughter, nor is there are no university records to support she was even a student. This is basic information I would expect of a landlord to provide under the circumstances. I would note that by April 1, 2020, many of the most austere restrictions imposed by the COVID-19 Pandemic were in full force. It is unclear to me whether the Landlord's daughter would have been attending courses in person in any event. Overlayed with this is the Tenant's evidence, which suggests that the upper tenant did make use of the basement rental unit, though much earlier than January 2021.

The Landlord's most compelling evidence is the BC Hydro statement associated with the upper tenant's name, indicating she took possession of it on October 20, 2020. However, that does not prove the daughter moved into the rental unit at all, and contradicts a point raised by the Landlord that the upper tenant took over the lower rental unit in January 2021. I would expect utility statements showing the service in the daughter's name or, at the very least, the Landlord's name on behalf of her daughter. The Landlord failed to provide this evidence.

I find that the Landlord has failed to demonstrate that a close family member occupied the rental unit within a reasonable time of the effective date in the notice or for at least 6 months. Accordingly, I find that the Tenant is entitled to compensation equivalent to 12 times the rent monthly rent payable under the tenancy agreement, which in this case is \$18,000.00 (\$1,500.00 x 12).

Conclusion

The Tenant is entitled to compensation under s. 51(2) of the *Act* equivalent to 12 times the monthly rent payable under the tenancy agreement, which in this case is \$18,000.00 (\$1,500.00 x 12).

The Tenant was successful in her application, and I find she is entitled to the return of her filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's \$100.00 filing fee.

It is the Tenant's obligation to serve the Landlord with the monetary order. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with 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: November 21, 2022

Residential Tenancy Branch