Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

On April 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*.

The Tenants attended the hearing and advised that the other two persons named on the Application were children. As such, the Style of Cause on the first page of this Decision has been amended to reflect this correction. The Landlords attended the hearing, with W.T. attending as well. He advised that he was no longer the property manager for the Landlords; however, he was acting as an agent for the Landlords for this hearing. As such, the Style of Cause on the first page of this Decision has been amended to reflect this correction.

At the outset of the 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 provided a solemn affirmation.

Tenant B.G. advised that a separate Notice of Hearing package was served to each Landlord, and to W.T., by registered mail on or around May 2, 2022. W.T. confirmed that this package was received and that the Landlords were prepared to proceed. As

such, I am satisfied that the Landlords were duly served the Tenants' Notice of Hearing package.

She then testified that their evidence was served to the Landlords on December 23, 2022, by registered mail. W.T. confirmed that the Landlords received this evidence, that they had reviewed it, and that they were prepared to proceed. As such, the Tenants' documentary evidence was accepted and will be considered when rendering this Decision.

W.T. advised that the Landlords' evidence was served to the Tenants on December 30, 2022, and B.G. confirmed that this was received. As such, the Landlords' 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 February 1, 2021, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on October 31, 2021, after receiving the Notice. Rent was established at an amount of $1,830.00 per month and was due on the first day of each month. A security deposit of $900.00 and a pet damage deposit of $900.00 were also paid. A signed copy of the written tenancy agreement was submitted as documentary evidence for consideration.

W.T. testified that the Tenants were served the Notice in August 2021 sometime, by registered mail. The Notice was served because “The rental unit will be occupied by the landlord of landlord’s close family member (parent, spouse or child; or the parent or child of that individual’s spouse).” As well, more specifically, the Landlords indicated that the family member that would be occupying the rental unit would be “The child of the landlord or landlord’s spouse.” The effective end date of the tenancy was noted as October 31, 2021, on the Notice.

W.T. advised that the Landlords took possession of the rental unit right away; however, due to the condition of the rental unit, and the son’s allergies, the carpet required replacing, and some minor renovations were necessary. These renovations were completed by the son, and he then moved into the rental unit sometime in November 2021. W.T. then contradictorily stated that the renovations started in “November or December” 2021. He testified that the son could live in the rental unit during the renovations, but would also “sometimes stay” in his parents’ basement. He confirmed that the son never changed his address to indicate that the rental unit was his new, permanent residence.

He then stated that the son took a new job in Richmond, that he moved from the rental unit at the end of May 2022, and that the rental unit was re-rented in or around July 2022. He referenced pictures submitted as documentary evidence to support the Landlords’ position that the son occupied the rental unit. He stated that these pictures were taken on or around the end of January 2022 or in February 2022.

B.G. advised that they steam cleaned the carpets before they gave up vacant possession of the rental unit, and she questioned why the Landlords would have returned their security and pet damage deposit if the rental unit was in such bad condition as alleged by W.T. She referred to a picture dated May 20, 2022, of new tenants allegedly moving into the rental unit. She also questioned why the son would have moved out of the rental unit if the renovations were completed to accommodate the son specifically.

She testified that the Notice was served right after the Landlords repaired the damage in the rental unit that was caused by a significant fire due to an ongoing dispute over a problem with the electrical system. She stated that there was no communication from the Landlords about their son moving in, and they only received a letter from the Landlords, dated August 13, 2021, referring to “owners’ use” of the rental unit.

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 Landlords' right to end a tenancy when the rental unit will be occupied by the Landlords or the Landlords' close family member.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, 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 Notice, I am satisfied that this was a valid Notice.

The next issue I must consider is the Tenants' claim for twelve-months' compensation owed to them as the Landlords did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated August 13, 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*
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> > *(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.*

At the time the Notice was served, the Landlords advised that the intention was for their son 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 Landlords followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date

of the Notice. Furthermore, the burden for proving this is on the Landlords, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, Policy Guideline # 2A 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)."

As well, Policy Guideline # 50 states the following:

> Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.
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> 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 for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.
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> A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Finally, Policy Guideline # 50 outlines the following about extenuating circumstances: "An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. 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."

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, I may need to 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 undisputed evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the Landlords or close family member only. While the Landlords allege that their son did move into the rental unit and also conducted renovations while living there, I do not find that the submissions made by W.T., on behalf of the Landlords, to be reliable, credible, or legitimate. Many of his responses were vague, general, or contradictory, and he could not provide exact or persuasive answers to many questions pertaining to relevant dates or details about the son allegedly moving in. It appeared as if many of these answers were created or crafted in response to any direct questions that were asked when the legitimacy of the Landlords' submissions was probed.

Moreover, while W.T. claimed that the rental unit was the son's primary address, I find it curious why there is no documentary evidence of the son ever changing his address on any government documents, or having any bill or mail in his name at that address. Given that the Landlords were aware of this hearing in May 2022, they had a significant amount of time to gather this type of evidence, and it would have not only been easy to do so, but would have supported a claim that the son actually moved there. As W.T. also claimed that the son would also live in the Landlords' basement, this causes me to be additionally doubtful that the son moved in to occupy the rental unit.

As well, the undisputed evidence is that the Landlords returned the Tenants' security deposit and pet damage deposit in full. I agree with the Tenants that returning these

deposits in full would more likely indicate that the Landlords had no issues with the state of the rental unit at the end of the tenancy. As such, I am skeptical of W.T. submissions that the rental unit was left in such a state that required renovations.

While I acknowledge that the Landlords submitted some pictures of the son apparently living in the rental unit, I note that these were taken approximately three to four months after he allegedly moved in. My first impression of some of these pictures is how minimally the son appeared to be living in there. I acknowledge that it is not out of the realm of possibility that the son lived in this manner; however, given the doubts raised above, this causes me to question further the reliability of W.T.'s submissions. Furthermore, some of these pictures appear to be odd in that they do not appear to haven been taken organically, as it does not seem logical or natural why some of these would have been taken in the first place. In my view, in conjunction with my doubts above, it appears, more likely than not, as if these pictures were staged to give the illusion that the son had moved in to occupy the rental unit.

In reviewing the totality of the evidence before me, I find that the above doubts and inconsistencies in the Landlords' evidence and testimony cause me to question the reliability of those submissions, and the credibility of the Landlords on the whole. I am satisfied that these submissions were likely crafted after receipt of the Notice of Hearing package in an attempt to portray a scenario that did not exist, and I prefer the Tenants' evidence instead. Ultimately, I do not accept that the Landlords used the property for the stated purpose for at least six months after the effective date of the Notice. As such, I find that the Tenants are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **$21,960.00**.

With respect to the Tenants' generalized claim of $8,040.00 for "pain, suffering and endangerment/negligence", I find it important to note that there are no provisions in the *Act*, to compensate a party for pain and suffering. The purview of my jurisdiction will only apply to breaches and offences committed under the *Act*, and the Tenants are limited to claims that relate to the *Act*. Should the Tenants wish to seek a civil claim, the Tenants should seek counsel to determine their viability of such under the appropriate court of competent jurisdiction. As such, this non-specific, vague, and ambiguous claim is dismissed without leave to reapply.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the $100.00 filing fee.

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$22,060.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: January 27, 2023

Residential Tenancy Branch