



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC FFT**

Introduction

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2021 (the "2 Month Notice") pursuant to sections 51(2); and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord, the Landlord's agent ("LW") and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. A witness ("LD") attended the hearing when required to provide testimony on behalf of the Tenant.

The Tenant stated she served the Notice of Dispute Resolution Proceeding and her evidence (collectively the "NDRP Package") on the Landlord in person sometime in May 2022. LW acknowledged the Landlord received the NDRP Package. I find the Tenant served the NDRP Package on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

LW stated the Landlord served his evidence on the Tenant in person sometime in October 2022 but the Tenant stated she received the Landlord's evidence in June 2022. Regardless of what date the Landlord's evidence was served on the Tenant, the Tenant acknowledged receipt of the Landlord's evidence in person, As such, I find the Landlord served his evidence on the Tenant in accordance with the provisions of section 88 of the Act.

Issues to be Decided

Is the Tenant entitled to:

- compensation from the Landlord in relation to the 2 Month Notice?
- recover the filing fee of the Application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

LW submitted into evidence a signed copy of the tenancy agreement, dated December 19, 2018, between the Landlord and Tenant. The parties agreed the tenancy commenced on February 1, 2019, for a fixed term ending January 31, 2020, with rent of \$1,500.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of \$750.00 and a pet damage deposit of \$750.00 by December 19, 2019. The parties agreed the Landlord returned the security and pet damage deposits to the Tenant. Based on the foregoing, I find there was a residential tenancy between the Landlord and Tenant and that I have jurisdiction to hear the Application.

The Tenant submitted into evidence a copy of the 2 Month Notice. The 2 Month Notice stated the Tenant was required to vacate the rental unit by May 31, 2021 ("Effective Date"). The Tenant stated she vacated the rental unit on April 1, 2021. The Tenant confirmed that she gave the Landlord written notice that she was moving out of the rental unit before the Effective Date. The 2 Month Notice stated the reason for ending the tenancy was because Landlord or the Landlord's spouse would be occupying the rental unit.

LW stated she performed housekeeping services in the rental unit for the Landlord starting on April 30, 2021. LW stated she cleaned the rental unit every two to three weeks until the middle of December 2021. LW stated the rental unit was a house with three bedrooms upstairs and two bedrooms downstairs. LW stated the Landlord moved into the rental unit at the end of April 2021. LW stated the Landlord was the only person who occupied the house from April 30, 2021 until the beginning of December 2021. LW stated she would have known if someone else lived in the house because she did the laundry. LW stated the Landlord initially slept downstairs in rental unit and then he moved upstairs to the living room. LW stated the Landlord furnished the living room with a lamp, TV stand, television, wooden mattress frame, mattress, dining room table and four chairs. LW stated the Landlord's son was building a new house on a property immediately adjoining the rental unit. LW stated the Landlord felt the living room was the best place to observe the adjoining property as there was no security for the new house. LW stated the Landlord performed renovations on the rental unit from time to time. LW stated the Landlord installed a third door to the rental unit for a fire exit from the basement. CW stated the Landlord's son placed an advertisement in Craigslist that stated the rental unit was available for October 15, 2021. CW Landlord stated new tenants moved into the basement of the rental unit in December 2021 with the intention of staying only a few days. CW stated the tenants then decided to rent the unit the entire house commencing on December 24, 2021.

The Tenant stated the Landlord already owned three houses. The Tenant stated the Landlord was demolishing the house beside the rental unit at the end of her tenancy. The Tenant stated the Landlord asked her if he could use the backyard and the Tenants electricity. The Tenant stated the Landlord told her that, if she did not agree, he would evict her. The Tenant stated that, when she told the Landlord she would not agree to his request, he evicted her. The Tenant argued the Landlord was not acting in good faith when he served her with the 2 Month Notice. The Tenant stated the Landlord blew out the side of the house to put in another door. The Tenant stated the Landlord build an illegal shed in the backyard of the rental unit and used the backyard as a giant dumping ground. The Tenant stated an order was made that required the Landlord to tear down the shed. The Tenant argued that the renovations performed on the residential property were not small.

The Tenant submitted a copy of an advertisement on Craigslist that showed the rental unit was available to rent for October 15, 2021. The Tenant stated the Landlord also placed a sign in the living room window of the rental unit sometime in September 2021 advertising the unit for rent. The Tenant stated she felt like she was bullied out of the rental unit so that renovations could be performed on the house next door. The Tenant

stated the Landlord lived in a large house elsewhere. The Tenant stated the Landlord has a wife, children and grandchildren and queried if the Landlord was separated and requested proof of such separation. The Tenant submitted into evidence a text message to LD in which she asked LD whether anyone was living in the rental unit. LD responded and stated no one was living in the rental unit from April 15, 2021 to June 11, 2021.

LD stated she and her husband lived next door to the rental property and observed what was happening after the Tenant vacated the rental unit until they moved away in October 2021. LD stated that, after the Tenant vacated the rental unit, no one lived in the unit. LD stated she and her husband could see a mattress on the floor in the living room of the rental unit. LD stated the Landlord would sleep on the mattress "every once in a while" and the Landlord would "sleep overnight on occasion". LD stated that, on a lot of occasions, the Landlord would stay until dark and then he would drive away in his van. LD stated her husband spoke to the Landlord regularly. LD stated the Landlord had an illegal shed built in the backyard of the rental property after the Tenant vacated the rental unit. LD stated the Landlord asked her husband and son occasionally if they would park their vehicles in the driveway to make it look like someone was living in the rental unit.

Analysis

Pursuant to Rule 6.6 of the RoP, the standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed. When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the standard of proof.

The Tenant seeks \$18,000.00 compensation pursuant to section 51(2) of the Act on the basis the Landlord failed to use the rental unit for the stated purpose in the 2 Month Notice.

The 2 Month Notice was served by the Landlord on the Tenant in accordance with the provisions of the Act. The parties agreed the Tenant vacated the rental unit on April 13, 2021.

Sections 49(1), 49(2), 49(3), 49(7) and subsection 49(8)(a) of the Act state in part:

49(1)(a) In this section:

[...]

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and

[...]

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[...]

(3) 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.

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8) A tenant may dispute

- (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
[...]

Pursuant to section 49(8)(a), the Tenant had the option of making an application for dispute resolution to dispute the 2 Month Notice on the grounds the Landlord did not intend in good faith to occupy the rental unit. Instead, the Tenant accepted the 2 Month Notice and vacated the rental unit on April 1, 2021. As such, the provisions of section 49(3) regarding the requirement that the Landlord intended in good faith to occupy the rental unit does not apply to the issues being considered by me at this hearing.

Subsections 51(2) and 51(3) of the Act state:

- 51(2) Subject to subsection (3), the landlord...must pay the tenant...an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement *if the landlord...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.*
- (3) The director may excuse the landlord...from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord...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.

[emphasis in italics added]

In contrast to section 49(3) of the Act, section 51(2) does not involve a consideration of whether the Landlord was acting in good faith to use the rental unit for the purpose stated in the Two Month Notice. Instead, section 51(2) requires a Landlord to pay compensation to a tenant where the Landlord does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period of time and has been used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline 50 ("PG 50") addresses the requirements for a landlord to pay compensation to a tenancy under the Act. PG 50 states in part:

Reasonable Period

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. [...]

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. *For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances.* For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

Accomplishing the Purpose/Using the Rental Unit

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.

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. 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.

[...]

*A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit, or a portion of the rental unit (see *Blouin v. Stamp*, 2011 BCSC 411), to a new tenant without occupying the rental unit for at least 6 months*

[emphasis in italics added]

LW stated she provided housekeeping services in the rental unit for the Landlord starting on April 30, 2021 and cleaned the rental unit every two to three weeks until the middle of December 2021. LW stated the Landlord moved into the rental unit at the end of April 2021. LW stated the Landlord was the only person who occupied the rental unit from April 30, 2021 until the beginning of December 2021. LW stated she would have known if someone else lived in the house because she did the laundry. LW stated the Landlord furnished the living room with a lamp, TV stand, television, wooden mattress frame, mattress, dining room table and four chairs. LW stated the Landlord's son was building a new house on a property immediately adjoining the rental unit. LW stated the Landlord felt the living room was the best place to observe the outside of the adjoining property as there was no security for the new house. LW stated the Landlord's son placed an

advertisement in Craigslist showing the rental unit was available for October 15, 2021. CW Landlord stated new tenants moved into the basement of the rental unit with the intention of staying only a few days. CW stated the tenants then decided to rent the unit the entire house commencing on December 24, 2021.

The Tenant stated the Landlord already had three houses. The Tenant stated the Landlord told her that, if she did not agree, he would evict her. The Tenant stated that, when she told the Landlord she would not agree to his request, he evicted her. The Tenant argued the Landlord was not acting in good faith when he served her with the 2 Month Notice. The Tenant provided a copy of an advertisement on Craigslist that showed the rental unit was available to rent for October 15, 2021. The Tenant stated the Landlord also placed a sign in the living room window of the rental unit sometime in September 2021 advertising the unit for rent. The Tenant stated she felt like she was bullied out of the rental unit so that renovations could be performed on the house next door.

LD stated she and her husband lived next door to the rental property and observed what was happening after the Tenant vacated the rental unit until they left moved away in October 2021. LD stated that, after the Tenant vacated the rental unit, no one lived in the unit. LD stated she and her husband could see a mattress on the floor in the living room of the rental unit that the Landlord would sleep on the mattress "every once in a while" and the Landlord would "sleep overnight on occasion". LD stated that, on a lot of occasions, the Landlord would stay until dark and then he would drive away in his van. LD stated the Landlord asked her husband and son occasionally if they would park their vehicles in the driveway to make it look like someone was living in the rental unit.

Section 51(2) of the Act does not require that a landlord to occupy the rental unit on a full-time basis or even require the landlord to sleep in the rental unit. Section 51(2) does not prevent a landlord from performing renovations, large or small, on a rental unit during the six-month period required by section 51(2) of the Act, provided the landlord is occupying the rental unit during that period.

The Tenant stated the Landlord placed a sign in the window of the rental unit sometime in the middle of September 2021 and submitted a copy of an advertisement on Craigslist indicating the rental unit was available for October 15, 2021. The Landlord acknowledged the advertisement was made on Craigslist and he did not dispute the Tenant's testimony that a sign for rent was placed in the living room window of the rental unit. However, there was no evidence from the Tenant or LD that the rental unit

was occupied by another tenant or someone using it as short-term accommodation prior to the end of the six-month period after the Effective Date of the 2 Month Notice or that the Landlord sold the rental unit during that period.. LW stated that, other than for the Landlord, no one else occupied the rental unit from May through to the beginning of December 2022. LD testified that no one lived in the house while she was living next door but she also testified to seeing the Landlord “sleep overnight on occasion”. However suspicious these advertisements may have been, there is no evidence that anyone else, other than for the Landlord, occupied the rental unit from the beginning of May to the end of November 2021.

Based on the testimony and evidence before me, I find the Landlord’s commenced occupying the rental unit at the end of April 2021 until at least the end of November 2021. As such, I find the Landlord occupied the rental unit for more than six months after the Effective Date of the 2 Month Notice. Based on the foregoing, I find the Landlord has established, on a balance of probabilities that he used and occupied the rental unit for the purpose stated in the 2 Month Notice within a reasonable period after the Effective Date of the 2 Month Notice and that the rental unit was used for the stated purpose until at least the end of November 2021, being more than six months after the Effective Date of the 2 Month Notice. Based on the foregoing, I find the Landlord is not required to pay the Tenant an amount that is equal to 12 times the monthly rent payable under the tenancy agreement.

As I have dismissed the Tenant’s claim for compensation, I find the Tenant is not entitled to recover the filing fee for the Application.

As I have dismissed all of the Tenant’s claims in the Application, I dismiss the Application in its entirety without leave to reapply.

Conclusion

The Application is dismissed in its entirety 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: January 19, 2023

Residential Tenancy Branch