



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties 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 called witness RS and witness SM. The tenant was provided with an opportunity to cross examine the witnesses but elected not to.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The tenant testified that he served the landlord with his application for dispute resolution and evidence via registered mail on June 28, 2022. A registered mail receipt for same was entered into evidence. The landlord testified that he received the above package on

July 2, 2022. I find that the landlord was served with the above documents in accordance with section 88 and 89 of the *Act*.

The landlord testified that the tenant was served with the landlord's evidence via registered mail on February 12, 2023. The tenant testified that he received the landlord's evidence on February 15, 2023. I find that the landlord's evidence was served on the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 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 their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The tenant provided the following undisputed testimony. This tenancy began on April 1, 2015 and ended on May 31, 2022 pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). Monthly rent in the amount of \$1,650.00 was payable on the first day of each month. A written tenancy agreement was signed by the tenant and the previous landlord (the "seller") and a copy was submitted for this application. The tenant lived in the upper suite of the house and the seller lived in the lower suite.

The landlord testified that he asked the seller to serve the tenant with the Notice because he and his partner purchased the subject rental property and his partner wanted to move into the subject rental property.

The tenant entered into evidence a document titled "Tenant Occupied Property - Buyer's Notice to Seller for Vacant Possession" which states that:

- the seller and the landlord have entered into a Contract for Purchase and Sale of the subject rental property dated March 28, 2022;
- all the conditions have been satisfied or waived,
- the property is rented to tenant;
- the buyer(s) intend in good faith to occupy the unit

The Notice was entered into evidence, is signed by the seller, is dated March 31, 2022, gives the address of the rental unit, states that the effect date of the notice is May 31, 2022, is in the approved form, #RTB-32, and states the following grounds for ending the tenancy:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenant testified that he filed this application for dispute resolution because a couple of months after he moved out he found an advertisement for the subject rental property online at an increased rental rate. The tenant entered into evidence an online advertisement for the subject rental property which seeks \$2,700.00 per month in rent and states that the property is available June 15, 2022.

The tenant testified that the landlord re-rented the unit at a higher rental rate and did not move in as stated on the Notice.

The landlord testified that he and his partner (AG) jointly purchased the subject rental house and are each 50% owners. The landlord entered into evidence mortgage and land title documents stating same.

The landlord testified that AG moved into the subject rental property on June 1, 2022, the day they took possession of the subject rental property. The landlord testified that they rented out the lower suite which was previously occupied by the seller and that AG moved into the upper suite, the subject rental property.

The landlord testified that the upper unit was advertised online because AG was looking for roommates and wanted to see what interest there was in the unit. The landlord testified that the landlord found roommates effective August 1, 2022. The landlord entered into evidence a Roommate Agreement between AG and NL at the rental house,

signed by both listed roommates, on August 1, 2022.

The landlord testified that AG resides in the subject rental property with his roommate NL and NL's partner.

The landlord entered into evidence:

- a Fortis bill for the subject rental house in AG's name for a billing period of June 16, 2022 to July 4, 2022,
- a BC hydro bill for the subject rental house in AG's name for the billing period of November 17, 2022 to January 16, 2023, and
- a utility bill for the subject rental house in AG's name with a billing date of November 29, 2022.

The tenant testified that having the bills in AG's name does not prove that AG resides at the subject rental property. The tenant testified that his current landlord has the utility bills in their name, but they do not live at his address.

The landlord entered into evidence a copy of AG's drivers' license which has a sticker on it bearing the address of the subject rental property. The tenant testified that the sticker looks fraudulent. The landlord testified that it is the address sticker provided by ICBC.

The landlord called witness RS who affirmed to tell the truth. Witness RS testified that she lives in the lower suite of the rental house and that she moved in July 15, 2022. Witness RS testified that AG lives in the upper unit and was already living there when she moved in on July 15, 2022.

The landlord called witness SM who affirmed to tell the truth. Witness SM testified that he is the next door neighbour to the subject rental house and that AG lives in the upper unit of the subject rental house. Witness SM testified that he moved into his home in 2018 and that AG moved into the subject rental property in June of 2022.

Analysis

Section 1 of the *Act* defines landlord as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Based on the mortgage and land title documents entered into evidence, I find that the landlord and AG are equal owners of the subject rental property. I find that the landlord and AG both meet the definition of landlord found in section 1 of the *Act* because they are both 50% owners of the subject rental property.

Section 51(2) of the *Act* states:

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.

Upon review of the advertisement for the subject rental property entered into evidence by the tenant, I find it unlikely that the landlords were looking for roommates in that advertisement as the advertisement did not state that roommate(s) were sought. The

advertisement advertised the entire upper suite for rent. Despite putting the subject rental property up for rent, I find, on a balance of probabilities, upon consideration of the independent witness testimony, that AG moved into the subject rental property in June of 2022 and continues to reside at the subject rental property. I find that this finding is supported by the utility invoices entered into evidence and AG's drivers' license. I do not find the drivers' license sticker to be suspicious.

While I agree with the tenant that utility invoices alone do not prove occupation, I found the affirmed testimony of the landlord's witnesses, in addition to the documentary evidence, to be persuasive. I find that the landlord has proved, on a balance of probabilities, that AG moved into the subject rental property within a reasonable time after the effective date of the Notice and currently resides at the subject rental property. Pursuant to my above finding, I dismiss the tenant's application for dispute resolution without leave to reapply.

Conclusion

The tenant's application for dispute resolution is dismissed 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: February 28, 2023

Residential Tenancy Branch