



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSD, MNETC, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- For an order returning the security deposit pursuant to section 38 of the Act
- For an order for compensation as the tenancy ended pursuant to a two, month notice and the landlord has not complied with the Act pursuant to section 51 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with the landlord SR appearing along with counsel HF, while the tenants, TB and JC appeared for themselves. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Preliminary Issue

The parties agreed that the issue of the return of the security deposit had been resolved in a previous dispute resolution hearing and that issue was no longer requiring adjudication. This portion of the application is dismissed without leave to reapply.

Issue(s) to be Decided

1. Are the tenants entitled to a monetary order for compensation of twelve months rent?
2. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on July 1, 2016. Rent was \$3,000.00 per month due on the first of the month, and the landlord still holds a security deposit of \$1,150.00. The tenancy ended August 31, 2022.

The tenants testified that they vacated the rental unit as a result of receiving a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") with an effective date of July 30, 2022. They initially disputed the Two Month Notice but then chose to settle their dispute. Tenant TB moved to another town. Tenant JC moved directly next door to the rental unit. The tenants testified that the rental unit was advertised for rent on Craigslist. The tenants produced the rental ad in evidence. The date and address of the rental unit are not apparent on the ad but the tenants testified that the ad was dated September 2, 2022 and the pictures in the ad show the tenants' furniture, so they are therefore certain this is the rental unit they vacated pursuant to the Two Month Notice.

The tenants further testified that they had a friend contact the phone number listed in the Craigslist ad and were told that the rental unit was available as of October 1, 2022. The tenants provided the messages between their friend and the landlord in evidence. The text messages are dated September 24 and the tenants confirmed that they were sent in 2022.

On November 1, 2022 the tenants noted a "For Rent" sign in the basement window of the rental unit. They provided a picture of the sign in evidence. The phone number on the sign isn't clearly visible, however the tenants took down the number and a friend of the tenants contacted the phone number and asked if the rental unit was available. The

individual that was contacted didn't confirm the rental unit was available but asked how many tenants would be residing in the rental unit and asked the individual inquiring to contact him by phone call.

The tenants stated that when they resided in the rental unit, which is a single family dwelling, they occupied the entire unit. They now allege that the property has been divided and the landlord is renting the upstairs and downstairs areas separately.

The landlord's counsel acknowledged that the Two Month Notice served on the tenants was not valid and enforceable. It did not list the tenants' names or the rental unit address. The Two Month Notice was served on May 29, 2022 with an effective date of July 30, 2022. The tenants did not vacate the rental unit on July 30, 2022 and did not pay rent for either July or August 2022, therefore a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was served on the tenants. The 10 Day Notice dated August 2, 2022 with an effective date of August 12, 2022 was provided in evidence. The landlord's position is the 10 Day Notice was valid and effective and that is the notice that ended the tenancy.

Both parties agreed that the reason for the Two Month Notice was the landlord wished to occupy the rental unit. The parties agree that the effective date of the Two Month Notice was July 30, 2022 and the tenants were in receipt of the Two Month Notice, and filed a dispute application in respect of the Two Month Notice which they did not pursue as the tenants had vacated the rental unit. The parties both agree that the Two Month Notice was served for landlord's use of property. The landlord further stated that he is renovating the rental unit to bring the property up to proper standards before he moves in. While the rental unit is being renovated, he has allowed the contractor to live in the rental unit.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

Compensation under section 51 of the Act is only available if the tenants vacate the rental unit pursuant to a two, or four.

The Two Month Notice was not in evidence before me. The landlord does not dispute that the Two Month Notice was served on the tenants, the landlord takes the position that the Two Month Notice was unenforceable. Therefore the tenants could not have vacated the rental unit pursuant to the Two Month Notice.

In the previous RTB decision the arbitrator found as a fact that the tenants did not pay rent for the month of August 2022 and that they were entitled to withhold rent for August pursuant to section 51 of the Act as compensation for ending the tenancy. Sections 51(1) and 51(1.1) allow a tenant who has received a two month notice to end tenancy to withhold the last month's rent as compensation. Tenants who receive a 10 day notice to end tenancy are not entitled to withhold their last month's rent.

I find that the tenants' vacated the rental unit pursuant to the Two Month Notice and were therefore entitled to one month's rent as compensation, as the previous arbitrator found. It is not open to me to further assess the validity of the Two Month Notice served on the tenants as the previous arbitrator dismissed the tenants' application for dispute resolution with respect to the Two Month Notice. I find the landlord took no steps to withdraw the Two Month Notice after it was issued and made no efforts to communicate to the tenants on its deficiencies.

As the tenants vacated the rental unit pursuant to the Two Month Notice I can consider whether they are entitled to compensation equal to 12 months rent as the landlord failed to use the rental unit as specified in the notice.

The landlord denied re-renting the rental unit after the tenants vacated. I prefer the evidence of the tenants on this point and find that the landlord did not use the rental unit as specified in the Two Month Notice.

The landlord admitted that he is not currently living in the rental unit. He stated through his counsel that he is currently renovating the unit, however I accept the evidence of the tenants showing that the rental unit was posted on Craigslist and was posted as an upper and lower suite. The evidence is compelling as the tenants testified that the photos of the unit on the website depicted their furniture. Further I accept the evidence of the tenants that their friend contacted the landlord in September, 2022 who confirmed that the unit was for rent. I also accept the photographic evidence produced by the tenants showing the "For Rent" sign in the lower window of the rental unit. Finally, one

of the tenants currently lives next door to the rental unit and provided compelling evidence that the rental unit is currently occupied by a family.

I find that the landlord has not used the rental unit for the purpose stated in the Two Month Notice and therefore the tenants are entitled to 12 months rent as compensation. The total amount of compensation the tenants are entitled to is \$36,000.00 as per section 58(2)(a) of the Act which specifically excludes this form of compensation from the monetary award limits prescribed by the Act.

As the tenants are successful in their application, they are also entitled to recover the filing fee for the application.

Conclusion

The tenants are granted a monetary order for \$36,100.00 in compensation and recovery of the filing fee. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 14, 2023

Residential Tenancy Branch