Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding 1199692 B.C.LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

On July 9, 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*.

Tenant D.A. attended the hearing, with B.S. attending as a translator for the Tenant. J.F. attended the hearing as an agent for the Landlord, with K.Y. attending as counsel for the Landlord, and with S.F. attending later as a witness.

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, with the exception of K.Y., provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by hand on or around July 21, 2022. K.Y. confirmed that this package was received, but there was not a copy of the tenancy agreement or the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") in that package. Based on this, I am satisfied that the Landlord was duly served the Tenants' Notice of Hearing package. Regarding the evidence, despite the tenancy agreement and the Notice allegedly not being included in this package, as the Landlord had a copy of these

already, I do not find this to be an issue. As such, I am satisfied that the Tenants' other documentary evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"). Consequently, this evidence was accepted and will be considered when rendering this Decision.

K.Y. advised that the Landlord's evidence was served to the Tenant by placing it in their mailbox on March 22, 2023, and the Tenant confirmed that this was received that same day. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, the Landlord's 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?
- 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 June 1, 2021, for a fixed length of time until May 31, 2022. The tenancy ended when the Tenants gave up vacant possession of the rental unit on May 6, 2022. Rent was established at an amount of $3,180.00 per month and was due on the first day of each month. A security deposit of $1,590.00 was also paid. A signed copy of the written tenancy agreement was entered into evidence for consideration.

Initial submissions were made with respect to the Tenants' forwarding address in

writing, as there was some mention of the return of the security deposit being an issue in the Tenants' Application. However, K.Y. advised that it was unclear that the matter with respect to the security deposit was an issue that would be addressed as part of this Application. As the Tenant did not object to dealing with the security deposit issue on a separate Application, this matter has been dismissed with leave to reapply. Should the Tenants believe that the security deposit has not been dealt with in accordance with the *Act*, the Tenants may make a separate Application to seek remedy to this issue.

Despite the Notice being dated March 25, 2022, all parties agreed that the Tenants were served the Notice on March 31, 2022, by hand. The reason the Landlord served the Notice was 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 Landlord 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 May 31, 2022, on the Notice.

K.Y. advised that the Landlord is a family corporation and that J.F. was a co-owner of the company. In addition, he submitted that S.F. was J.F.'s son, that S.F. moved into the rental unit in or around mid-May 2022, and that he still resides there. He stated that S.F. lived in the same home as J.F., that J.F.'s father was injured in November 2021, and that he was visiting in February 2022. As such, it was determined that her father would move into S.F.'s room, rendering S.F. without reasonable accommodation as he was then sleeping in the living room.

As a result, the Notice was served so that S.F. could have a place to live comfortably. There was no documentary evidence submitted to corroborate the father's injury, to prove that S.F. was sleeping in the living room, or to substantiate that S.F. moved to the rental unit.

However, S.F. testified that he lived with J.F., that his grandfather moved into his room in early March 2022, that he was then relegated to the adjoining room, and that this was not a good long-term solution. He confirmed that he moved into the rental unit in May 2022, that he still resides there, and that he did not bother to change his address on any documents. He advised that the rental unit was four bedrooms, that he occupied one bedroom, that J.F. would organize short-term rentals for the other bedrooms, and that he would not be involved in this process. While he was not sure of the exact dates or lengths of stay, he acknowledged that some people stayed in July 2022. As well, he

stated that he would get to know some of these people, but then they would “move out after months.”

The Tenant did not have any questions for S.F., so S.F. was permitted to exit the teleconference. The Tenant referred to the documentary evidence submitted of the Landlord’s advertisement for the rental unit on Airbnb in July 2022. As well, he testified that his friend was able to make a reservation for these available three bedrooms.

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 Landlord’s right to end a tenancy when the rental unit will be occupied by the Landlord or the Landlord’s close family member.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, 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 Landlord did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated March 25, 2022, 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, it was the Landlord's intention 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 Landlord 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.

When reviewing the consistent and undisputed evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the Landlord or close family member only. While there is no dispute that their son did move into the rental unit in May 2022, it is also undisputed that the rental unit was four bedrooms in size, that S.F. only occupied one of those rooms, and that the Landlord then rented out the other rooms, likely multiple times, starting as early as July 2022. Even though the Landlord technically complied with the *Act* by having their son move in, I do not accept that the Landlord would then be permitted to separate parts of the rental unit, and then re-rent those rooms within six months of the effective date of the Notice.

In my view, this Notice is to be used when the Landlord has a legitimate reason for ending the tenancy, and must use the rental unit for that stated purpose solely. Again, while the Landlord has complied with the *Act* by having their son move into the rental unit, it is clear that the son only occupied one of the rooms, and that the Landlord then proceeded to rent out the other bedrooms. I find that the intention of this Section of the *Act* was to prevent the Landlord from ending a perfectly good tenancy, and allowing the Landlord to benefit from using this type of Notice improperly. As the Landlord's son only used a portion of the rental unit, I am satisfied that the Landlord did not use the property for the stated purpose for at least six months after the effective date of the Notice. I am also satisfied that the Landlord likely and intentionally served this Notice in an effort to take advantage of this situation and benefit financially from it.

Ultimately, I do not accept that the Landlord 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 **$38,160.00**.

In addition, the Tenants' claim for remedy regarding their security deposit is dismissed with 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 **$38,260.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should

the Landlord 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: April 5, 2023

Residential Tenancy Branch