



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, RPP

Introduction

The former Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on December 18, 2022. They are seeking compensation related to the Landlord ending the tenancy.

The matter proceeded by hearing on April 25, 2023 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

At the outset of the hearing, each party confirmed their receipt of the other’s prepared evidence package. On this assurance, the hearing proceeded as scheduled.

Issue to be Decided

Is the Tenant entitled to compensation for the Two-Month Notice to End Tenancy for Purchaser’s Use of Property (the “Two-Month Notice”), pursuant to s. 51 of the *Act*?

Is the Landlord obligated to return the Tenant’s personal property?

Background and Evidence

Neither party provided a copy of the tenancy agreement in their evidence; however, the Tenant gave the details that the tenancy started in 2015, with the rent amount being \$586. The Landlord verified these details as correct.

In 2020 the Landlord gave the Tenant notice that the Landlord wanted to move into the rental unit themselves at some point. In 2021 the Landlord served a One-Month Notice to End Tenancy for Landlord's Use (the "One-Month Notice"), and that specified the end-of-tenancy date as August 1, 2021. The Tenant disputed the One-Month Notice, and after a hearing, on August 30, 2021 the Residential Tenancy Branch confirmed the One-Month Notice, thereby ruling that the tenancy will end. After a judicial review of that Residential Tenancy Branch decision, the BC Supreme Court ruled that the Tenant had to move out by October 31, 2021.

The Landlord in a written statement provided that the Tenant stayed in the rental unit without paying rent, from November 1 to January 18, 2022. A bailiff removed the Tenant from the rental unit on January 18, 2022. This resulted in a fair amount of the Tenant's personal belongings left behind; the Landlord deemed this "garbage". After the tenancy ended, one of the Tenant's bicycles that was left behind at the rental unit property was stolen. The Landlord provided that a police report was made "on or about February 18, 2022."

The Landlord provided photos showing the state of the rental unit after the end of the tenancy, dated February 16, 18, and 25, to show the number of belongings/garbage left behind after the tenancy had ended. The Landlord included a copy of their letter to the Tenant dated February 14, 2022, stating directly to the Tenant that their belongings needed to be removed from the property before February 25, 2022. This stated: "Any items that are left on the property or outside the fence that are not removed the day that you request will be recycled or disposed of."

The Landlord also provided pictures of various rooms within the rental unit, to show the extent of work they needed to complete in the rental after the tenancy ended. A copy of the Landlord's driver's license shows their address to be that of the rental unit.

In the hearing, the Landlord described living on the property after the tenancy ended, in a "fifth wheel" RV that was on the property. They described the work they undertook to repair the rental unit that was "in really rough shape." This entailed ripping out floors in the bathroom and kitchen, and pulling out the kitchen cabinets,. By January 1, 2023 the Landlord moved into the rental unit and then sold the fifth-wheel RV.

The Tenant described their observations of the rental unit property after the tenancy had ended. The rental unit "just sat there", and the Landlord's vehicle was there occasionally in the evenings. In summary, the Tenant stated that it was approximately one year after the tenancy had ended and the Landlord did not move into the rental unit.

The Tenant claims \$7,032, being the amount of 12 months' rent because the Landlord did not accomplish the stated purpose for ending the tenancy within a reasonable amount of time. As provided on their Application: "[the rental unit] sat empty. . . [and] as of today December 18th it remains empty." Further: "I have gone by the [rental unit] every day just to see if [the Landlord] would follow through and no he has not."

The Tenant acknowledged that they left a lot of material behind after the end of the tenancy. They approximated the value of two bicycles they are asking to be returned at \$500 and \$1,000 each. They allege that two "fairly expensive mountain bikes were "stolen"" but they believe the Landlord kept them and took them elsewhere.

The Landlord closed by stating they have disabilities, and this made the work at the rental unit difficult, only being able to spend limited time on the rental unit for repairs and replacement of key parts within. This took 7 or 8 months during the time they were living in the fifth-wheel RV on the property while completing the work.

Analysis

Under the *Act* s. 49 a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. The Landlord here issued the Two-Month Notice for this reason.

There is compensation awarded in certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 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 . . . 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 . . . for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The onus is on the Landlord to prove that they accomplished the purpose for ending the tenancy and that they used the rental unit for its stated purpose for at least 6 months. Failing this, the Landlord must present that extenuating circumstances prevented this.

I find the Landlord has met the burden of proof to show that they accomplished the purpose for ending the tenancy. The moved into the fifth wheel RV on the property; I find this was their own use of the rental unit within a reasonable amount of time after the Tenant moved out on January 18, 2022.

My decision is based on a balance of probabilities with respect to the evidence either party provided in this matter. I find it reasonable that the Landlord lived at the rental unit property and undertook completion of work within the rental unit that took a longer-than-anticipated amount of time. The Landlord in effect lived in the rental unit during this time, minus any evidence to the contrary.

I find the Tenant in their statements in the hearing and the evidence they provided did not offset the Landlord's evidence and testimony. I find the Tenant's submissions to be conjecture, rather than actual proof that the Landlord's was not present. The Tenant did not specify dates they observed no activity or no one living in the rental unit, and provided no other evidence such as photos, or others' knowledge of the situation, material that may have helped to show the Landlord's absence to be fact. The Landlord, by contrast, provided distinct details of what happened at the rental unit, the amount of work involved, and the measures they undertook to live there in a fifth-wheel RV in order to complete the work.

I find the Tenant was not as detailed in their record of observations as was necessary. This would entail an accurate and abundant record of dates, specific observations, and photo evidence where necessary. I find the Tenant did not provide sufficient evidence to build their case.

In sum, the Tenant did not offset the statements of the Landlord in the hearing, and the Landlord's provided evidence. In this, I find the Landlord did accomplish the stated purpose within a reasonable period after the effective date of the notice. I dismiss this piece of the Tenant's Application for this reason, without leave to reapply.

The Tenant is attempting to reclaim two bicycles that were left at the rental unit property after the tenancy ended. I find the Tenant had the opportunity to collect any personal material in February 2022; however, they did not accomplish retrieval of the bicycles. Unable to show definitively that the Landlord is still holding these bicycles that the Landlord stated were stolen, I make no order for the return of these specific pieces of the Tenant's property, minus any proof of ownership, or even that they exist at the rental unit property. The Tenant apparently did not make the effort to retrieve these items in the past, and minus any information about any attempt, I find this is not a specific request that needs rectification or any further obligation from the Landlord.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 28, 2023

Residential Tenancy Branch