



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with a tenant's application for compensation payable where a landlord does not use a rental unit for the reason stated on the Two Month Notice to End Tenancy for Landlord's Use of Property, as provided under section 51(2) of the Act.

Both parties appeared and/or were represented at the hearing and the parties were affirmed. The landlords had a witness with them at the commencement of the hearing. The witness was excluded with instruction to wait until called to testify.

I confirmed the tenant sent her Application for Dispute Resolution to the landlords in July 2022 and the landlords received it via registered mail.

As for the tenant's evidence, I heard it was sent to the landlords, via registered mail, on February 27, 2023 but that the landlords did not receive it until March 15, 2023 because they had been away on vacation. I explored options, including an adjournment, but the landlords indicated they had reviewed the materials and were prepared to respond to it. Therefore, I admitted the tenant's evidence and considered it in making my decision.

As for the landlord's evidence, they acknowledged they did not serve the tenant with the same materials they submitted to the Residential Tenancy Branch. Given the late receipt of the tenant's materials, I explored granting an adjournment; however, the landlord's indicated they did not want to adjourn the proceeding and would provide their evidence orally.

The landlords pointed out that the name of the male landlord was incorrect. I amended the application to reflect the landlord's actual name without objection of the tenant.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

Is the tenant entitled to additional compensation payable under section 51(2) of the Act?

Background and Evidence

The parties entered into a written tenancy agreement for rental of a basement suite that is located below the landlord's living unit.

The tenancy was set to start on April 1, 2022. The rent was \$2200.00 for the one bedroom suite and the parties agreed that the rent would be \$2400.00 if the tenant were provided a second bedroom.

On April 29, 2022 the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") with a stated effective date of June 30, 2022. The reason for ending the tenancy was that the rental unit would be occupied by the landlord or landlord's spouse.

The tenant did not file to dispute the Two Month Notice. Rather, the parties reached an agreement that the tenancy would end effective June 1, 2022.

The tenant paid rent of \$2200.00 for April 2022 and no rent was paid for May 2022 as compensation for receiving the Two Month Notice.

The tenant submitted that on May 28, 2022 she found the rental unit posted on Airbnb. The tenant provided a video showing screen shots from the Airbnb website. The tenant acknowledged that the picture of the house seen in the Airbnb posting is not the landlord's house and the description indicates the house is on a different street than the landlord's house; however, the tenant attributed this discrepancy to the landlord's trying to avoid getting caught renting the unit out on Airbnb.

The tenant also provided an image from another website (Honest Door) that shows what the subject property could be rented for and its estimated value.

The landlords responded that they have never listed the rental unit or the residential property for rent on Airbnb. The landlord's submitted that the house pictured in the Airbnb listing is not their house but that it is a house located one street over. As for the address of the residential property appearing on one image, the landlord's stated that Airbnb does not provide the addresses of its listing. Rather, one can search for listings by entering an address and the website will find nearby rentals. It appears the tenant entered the address of the residential property in the site and the nearby property shows up in the search results.

The landlords responded that the Honest Door website provides estimates for any property, even ones that are not rented out or listed for sale.

The landlords testified that after the tenancy ended, they use the rental unit space for their own purposes, including space for yoga and healing activities and to accommodate guests when they have company. The landlords have a sofa and table and chairs in the rental unit. The female landlord stated she also runs a home based healing business from the property.

The landlords stated that their witness, who is a neighbour, will provide testimony concerning the house that is listed on Airbnb on the nearby street and that there are no signs of any other tenant(s) at the residential property.

The tenant responded that the landlord conducted her home based business from the main unit during her tenancy. The tenant also found it highly suspicious that the landlords moved to evict her after less than one month into her tenancy; however, the tenant also acknowledged that she did not file to dispute the Two Month Notice, explaining that she did not want to live at the property with the landlords.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

It is undisputed that the tenant was served with a *Two Month Notice to End Tenancy for Landlord's Use of Property* ("Two Month Notice") by the landlords under section 49 of the Act and the stated purpose was so that the landlord or landlord's spouse may occupy the rental unit.

Where a tenant receives Two Month Notice under section 49 of the Act, the tenant is entitled to compensation as provided under section 51 of the Act. The tenant has already received the compensation payable under section 51(1) by not paying rent for May 2022. By way of this application, the tenant is seeking the additional compensation payable under section 51(2) of the Act. Below, I have reproduced section 51(2) of the Act:

(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

(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.

Section 49(3) of the Act permits a landlord to end a tenancy so that the owner, or owner's close family member, may occupy the rental unit themselves. The landlords submitted that they reclaimed the basement suite as an extension of their home on the main level, and deny that it has been rented out to anyone. This type of use is contemplated, as seen in Residential Tenancy Policy Guideline 2A, where it provides:

Reclaiming a rental unit as living space

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

A landlord cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it. In general, the entirety of the reclaimed rental

unit is to be occupied by the landlord or close family member for at least 6 months. (See for example: Blouin v. Stamp, 2021 BCSC 411)

[My emphasis underlined]

The tenant is of the view the rental unit has been re-rented by way of short term rentals and that she has evidence to support that.

Upon review of the tenant's evidence, being images from Airbnb and Honest Door, I find the evidence does not demonstrate the rental unit was rented out after the tenancy ended. As submitted by the landlord, a person can enter any address into the Airbnb search field and the locations of nearby rental properties will populate the search results. In entering the rental unit address, a nearby house populated the search results but it is not the rental unit.

As for the Honest Door website, it provides estimates for a selling price and rental price, if the property was rented or sold, for any address one enters into the search field but it does not mean the property is actually for rent or for sale.

The landlords had a witness standing by to confirm the house seen in the Airbnb search result is an actual house listed on Airbnb in the neighbourhood and that no tenants have been seen coming and going from the subject residential property.

Upon consideration of everything before me, I find the landlord's submissions are credible and the tenant has not provided evidence to suggest otherwise. Therefore, I dismiss the tenant's claim against the landlords, without leave to reapply.

Conclusion

The tenant's claim against the landlords 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: April 11, 2023

Residential Tenancy Branch