



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACE AGENCIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking compensation because the tenancy ended as a result of a two, four or 12 Month Notice to End Tenancy, and the landlord has not complied with the Act or used the rental unit for the stated purpose, and to recover the filing fee from the landlords for the cost of the application.

Both tenants and the individually named landlord attended the hearing. The landlord was accompanied by the landlord's son who assisted the landlord due to a language barrier.

At the commencement of the hearing the landlord's son applied to adjourn the hearing on behalf of the landlord, stating that the landlord received an email about rescheduling the hearing from the Residential Tenancy Branch, but thought it was a phishing email. The tenant advised that the tenants attempted to get an email address for the landlord, and made an application for substitutional service.

The record shows that the tenants were successful in obtaining a substitutional service order dated August 18, 2022 stating that the tenants may serve the Notice of Dispute Resolution Proceeding, supporting documents, evidence and a copy of the Substitutional Service Decision by text message. The tenants have complied and opposed an adjournment. The landlord's application to adjourn the hearing was denied.

The tenants have also provided proof of service of the tenants' evidence, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the rental unit was used commencing within a reasonable time after the effective date of a Two Month Notice to End Tenancy for Landlord's Use of Property and for at least 6 months duration?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 24, 2019 and reverted to a month-to-month tenancy after October 31, 2020, which ultimately ended in October, 2021. Rent in the amount of \$2,700.00 was payable on the 1st day of each month and there are no rental arrears. On October 4, 2019 the landlords collected a security deposit from the tenants in the amount of \$1,350.00 as well as a pet damage deposit in the amount of \$1,350.00, but does not know if any of the deposits were returned to the tenants. A copy of the tenancy agreement has been provided by the tenants for this hearing.

The tenants have also provided pages 1 and 2 only of a 4-page Two Month Notice to End Tenancy for Landlord's Use of Property. It is dated August 27, 2021 and contains an effective date of vacancy of October 31, 2021. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the child of the landlord or landlord's spouse. The landlord was unaware that the property management agency gave the Notice, and the landlord is no longer in contact with them. During cross examination, the landlord testified that the landlord asked the property management agency to issue the Notice so the landlord's mother-in-law could move in.

The landlord further testified that in mid-December, 2021 the landlord's mother-in-law and sister moved into the rental unit. The only advertisement to re-rent was in June, 2022. The landlord's mother-in-law cannot live alone, and the sister got a job elsewhere, and the landlord's mother-in-law is 80 years old and now lives with the landlord. The rental unit was re-rented on July 1, 2022 for \$2,400.00 and the new tenants still reside there. The home was listed for sale in mid-May, 2022. The lower level rented in August, 2022 and the landlord collects \$4,100.00 total for the upper and lower units. Both were advertised at the same time. The tenants had been paying

\$2,700.00 for the whole house. The landlord's mother-in-law lived in the rental unit for about 3 months, from December, 2021 to February, 2022.

The first tenant (AB) testified that the tenants moved out in October, 2021. The tenants' evidence includes advertisements for rent of \$2,400.00 which was posted in June, 2022. The house was listed for sale on May 9, 2022.

The tenants' suspicion was that the tenants were being evicted for other reasons. Prior to receiving the Two Month Notice to End Tenancy for Landlord's Use of Property, the tenants were in contact with the landlord due to faulty plumbing, and the house needed to be re-piped. The day prior to receiving the Notice, the tenants told the landlord that the tenants would be willing to work with plumbers to avoid moving, then received the Notice stating that family would be moving in.

The tenant drove by and noticed on multiple occasions that the snow in the driveway was not cleared, the mailbox was overflowing with flyers and mail. Photographs have been provided for this hearing. The tenant also compared previous gas bills to the gas meter in 2022 which showed a significant decrease for January, 2022. The tenants have also provided 4 letters from neighbours all stating that no one moved in between November 1, 2021 to May 11, 2022.. No one was living in the house prior to the home being listed for sale.

The second tenant (JP) testified that all of the evidence provided of gas meter readings, mail stacking up, and lack of snow removal proves that no one was there at all during the time the tenants vacated and 6 months after.

Analysis

Firstly, I notice conflicting information in the landlord's own testimony, who stated that the landlord didn't know that the property management company issued the Notice, but also testified that the landlord asked that the Notice be issued.

Where a landlord issues a notice to end a tenancy for landlord's use of property, the landlord must have good faith intent, with no ulterior motive for issuing it. If the landlord fails to use the rental unit for the purpose contained in the Notice commencing within a reasonable time after the effective date of the Notice and continue to use it for at least 6 months duration, the landlord must repay the tenant 12 times the monthly rent. The

onus is on the landlord to demonstrate that good faith intent. The law also states that where I find that extenuating circumstances exist that prevented the landlord from accomplishing the stated purpose, I may decline to order 12 times the monthly rent.

In this case, the Notice was effective October 31, 2021. The landlord testified that the landlord's mother-in-law moved into the rental unit in mid-December, 2021 and had to move in with the landlord in February, 2022 due to a sister vacating, and the landlord's mother-in-law was not able to live alone. The landlord has not provided any evidentiary material. The tenants have provided advertisements for rent and numerous photographs dated between December 15, 2021 and March 30, 2022 that appear to show that the rental home was vacant. A very large amount of mail and newspapers remained in the mailbox, the garbage had not been taken to the curb while neighbours had, no vehicles parked in the driveway, no snow removal or disturbance in the driveway from driving or walking. The advertisement for sale is dated May 9, 2022 and the landlord testified that it was re-rented for \$2,400.00, as 2 separate units for a total of \$4,100.00.

In the circumstances, I find on a balance of probabilities that the landlord did not have good faith intent and did not use the rental unit for the stated purpose within a reasonable time after the effective date of the Notice, and did not use it for that purpose for at least 6 months' duration, but that the rental unit sat vacant until re-rented as 2 separate units for about \$1,700.00 per month more than the tenants had been paying. I am not satisfied that the landlord has established that any extenuating circumstances existed that prevented the landlord from accomplishing the stated purpose for ending the tenancy. Therefore, I find that the tenants are entitled to compensation equivalent to 12 months rent payable under the tenancy agreement, or \$32,400.00.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenants as against the landlords in the amount of \$32,500.00. The landlords must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the Residential Tenancy Act in the amount of \$32,500.00.

This order is final and binding and may be enforced.

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: May 15, 2023

Residential Tenancy Branch