



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PETERSON [
tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the Tenants' November 24, 2022 application pursuant to the *Residential Tenancy Act* (the Act) for:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2)
- An authorization to recover the filing fee for this application, under section 72

Preliminary Issues

- Rental Address

The rental unit address was corrected in the application to add "Carriage Home".

- Evidence

There was some dispute by the Landlord's Lawyer JF (the Landlord's Lawyer) over evidence submitted by the Tenants on May 27, 2023. Considering I did not review that evidence in making my decision and I allowed the parties to give oral submissions about that evidence, I will not address whether that evidence is admissible.

Issued to be Decided

- Are the Tenants entitled to a monetary order in an amount equivalent to twelve times the monthly rent?
- Are the Tenants entitled to recover the filing fee for this application from the Landlord?

Background and Analysis

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and information in this decision.

The Landlord is a family corporation that purchased the rental property, which includes the rental unit and the main house, the main house has 3 bedrooms and the rental unit has 2 bedrooms. OO and PO are shareholders and directors of the Landlord and were the ones occupying the property after completion of the sale. The Tenants allege that someone other than the Landlord or their close family member moved into the rental unit. The Landlord claims that no one other than family members have occupied the rental unit.

The Tenant AR confirmed the following details with respect to the tenancy:

- The tenancy began May 1, 2017 and ended September 1, 2022
- Rent was \$1,715 per month and was due on the 1st of the month
- A security deposit of \$825 and a pet damage deposit of \$825 was collected and returned to the Tenants.

Per section 51(2) of the Act, the Landlord has the onus to prove that they used the rental unit for the stated purpose in the notice to end tenancy for landlords use for at least 6 months.

Both parties agreed the original landlord served a notice to end tenancy for landlord's use on June 28, 2022 (the Notice). The original landlord served the Notice because the Landlord, as the purchasers or a close family member intended in good faith to occupy the rental unit. The Tenants submitted the Notice into evidence. The effective date was September 1, 2022.

The Tenant AR argued that the Landlord does not have a family member living there. The Tenant AR recounted two interactions with OO, one where OO mentioned the rental unit was too small for their family and another where they asked who was living in the rental unit and OO stated "we have someone living there temporarily."

The Landlord's Lawyer stated that 5 people occupy the property OO, PO, their children and either OO's father or PO's mother, which given the lack of space in the main house requires them to use the rental unit as well. Additionally, the Landlord's Lawyer advised that the rental unit is used by PO's mother, PO for studying and for general storage. Further, OO's father was living in the rental unit but when he left PO's mother began living there. The Landlord's Lawyer stated that OO and PO began occupying the main

house August 1, 2022 and the rental unit after the Tenants moved out between September 9 or 10, 2022.

While the Tenants submitted evidence of someone living in the rental unit, for example, the rental unit garbage can being used, Halloween decorations and items in a window of the rental unit, this could equally be used to support that OO and PO are using the rental unit for themselves. Given the number of people testified to be living on the property it would be reasonable to find that both the rental unit and the main house are being used by the Landlord. I do not find that there is any evidence to conclude that the Landlord's are not occupying the rental unit.

The Tenants also argued that the Landlord is planning to redevelop the property and that the wrong reason was selected on the Notice. In response the Landlord's Lawyer stated that only a proposal was submitted to the Kelowna City Counsel in May 2023 (the Proposal), but no permits have been granted or any approval given. Further, the Landlord's Lawyer argued that it would take at least 2 years before any movement would occur on the rezoning or development of the property.

The redevelopment of the property is simply an idea and no permits or approvals have been granted. Based on the submissions no redevelopment of the property has taken place. Additionally, the Proposal occurred in May 2023 which was beyond the 6 months required by the *Act*. The *Act* does not require that a landlord use the property for the stated purpose forever, rather it requires that a landlord or family member occupy the rental unit for a minimum of 6 months, afterwards parties are free to use the property for any purpose they choose.

After reviewing the testimony and the documentary evidence accepted into these proceedings, I find that there is enough evidence before me, to prove on a balance of probabilities, that the Landlord did use the rental property for the stated purpose as indicated on the Notice for at least 6 months. Consequently, I dismiss the Tenants' claim for compensation.

Filing Fee

Given that the Tenants were not successful in their application, I decline to award them the filing fee.

Conclusion

I dismiss the Tenants' application, 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: June 12, 2023

Residential Tenancy Branch