



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on June 1, 2023 concerning an application made by the tenant seeking monetary compensation for the landlord's failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call.

The tenant testified that the landlord was served with the Notice of Dispute Resolution Proceeding and all evidence by registered mail on September 24, 2022. The tenant has provided a copy of a Canada Post cash register receipt dated September 24, 2022 which also contains a tracking number. The tenant testified that the documents were sent to the address of the rental unit because the notice to end the tenancy indicates that the purchaser will occupy the rental unit. I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence of the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for the landlord's failure to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The tenant testified that this month-to-month tenancy began in 2016, and the parties entered into a new tenancy agreement on January 1, 2019. Rent in the amount of \$3,500.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy in 2016 the tenant paid a security deposit to the previous landlord in the amount of \$600.00, all of which has been returned to the tenant. The tenant had rented the basement, and then occupied the upper level of the home after the landlord moved out.

The landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided for this hearing. It is dated May 12, 2022 and contains an effective date of vacancy of July 31, 2022. The reason for issuing it states: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit," which also names the purchaser, who is the landlord named in the tenant's application.

The tenant has provided several advertisements for re-renting which were noticed by the tenant on August 9, 2022. The tenant is not sure if the rental unit was re-rented, but a Face Book advertisement dated August 21, 2022 indicates that the rental home has been sold. Advertisements for the basement suite have been provided for this hearing indicating that the 3 room basement is available for \$600.00 per month. Another advertisement states: "There is 3 room available for 5 or 6 people, or if you want to live alone rent is \$800.00 for room (\$600.00 share room each person) including utilities and laundry," and specifies the address of the rental unit. It also contains a contact of the purchaser.

Analysis

Where a tenant makes an application for compensation due to the landlord's failure to use a rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to establish that the rental unit was used for the stated purpose.

In this case, the landlord has not provided any evidentiary material and has not attended the hearing. The law states that a landlord, or purchaser, who gives such a notice to end a tenancy must accomplish the stated purpose within a reasonable time

after the effective date of the notice, and must establish that the rental unit was used for that purpose for at least 6 months. In this case, the advertisements were placed about 1 month after the effective date of the notice.

I have reviewed all of the evidence of the tenant, and I accept the undisputed testimony of the tenant that the rental unit was advertised for rent and subsequently sold. That is contrary to the *Act*, and I find that the tenant is established a claim for compensation of 12 times the monthly rent, or \$42,000.00.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in the amount of \$42,100.00. The landlord 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 tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$42,100.00.

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: June 07, 2023

Residential Tenancy Branch