



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the former Tenants on August 8, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation in the amount of 12 times their monthly rent, pursuant to section 51(2) of the Act; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 pm on May 2, 2023, and was attended by the Tenants and the Landlord. All testimony provided was affirmed. The Purchaser acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP) and the former Tenants' evidence, and stated that there are no concerns regarding the service dates or methods. I therefore accepted the former Tenants' documentary evidence for consideration and the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary matters

The Purchaser requested an adjournment so that they could submit documentary evidence for my consideration, as they stated that they did not understand that this was necessary far enough in advance of the hearing to be able to gather and submit evidence. Although I asked the Agent if they would be willing to consent to an adjournment for this purpose, they said that they would not. Pursuant to rules 7.8 and 7.9 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure), I denied the Purchasers request for an adjournment as I was satisfied that the Purchaser had more than enough notice of the hearing purpose and date, and that the reason they were unable to submit evidence on time was a lack of due diligence on their part with regards to reading the NODRP, the Act, and the Rules of Procedure, which state that the Purchaser bears the burden of proof in this matter, evidence is important, there are evidence service and submissions deadlines, late documentary evidence may not be considered, and that no additional documentary evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator.

The failing of the Purchaser to inform themselves of the importance of documentary evidence, how and when to submit and serve documentary evidence, and the consequences of failing to serve or submit documentary evidence on time, does not constitute a valid reason to adjourn the proceedings. Especially given the objection of the Tenants' Agent. As a result, the hearing proceeded as scheduled based only on the Tenants' documentary evidence, the submissions and arguments of the parties, and the affirmed testimony provided at the hearing.

Issue(s) to be Decided

Are the former Tenants entitled to compensation in the amount of 12 times their monthly rent, pursuant to section 51(2) of the Act?

Are the former Tenants entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the tenancy ended on January 31, 2022, as the result of a Two Month Notice issued by the previous landlord so that the Purchaser could occupy the rental unit. The effective date of that notice is February 28, 2022. The Purchaser stated that they took possession on March 1, 2022, and the parties agreed that rent under the tenancy agreement at the time the tenancy ended was \$1,000.00 per month.

The Purchaser stated that within a month of taking possession of the home in which the rental unit was located, they started renovations including replacing flooring, replacing both kitchens, renovating bedrooms, and repairing the back deck. The Purchaser stated that the renovations concluded in July of 2022 and that they lived in the home during the renovations. The Purchaser stated that in August of 2022, they posted the upstairs portion of the home on a short-term rental site, and that it is still listed on that site. The Purchaser stated that they do not rent out the upper portion of the home, which was never rented to the former Tenants, when their family is visiting, and that they have lived in the property the entire time. The Purchaser stated that they lived upstairs while they were renovating the basement suite, which was the rental unit, and lived downstairs when they were renovating the upstairs.

The Agent stated that the former Tenants rented the basement suite of the home for 28 years and were told that the Purchaser's mother would live upstairs, and that the Purchaser would live downstairs, which is not what has occurred. The Agent stated that the former Tenants routinely kept coming to the rental unit to pick up their mail and could see that renovations were ongoing. The Agent stated the former Tenants spoke to someone upstairs who indicated that they were renting the unit and that despite trying many times to knock on the basement door they never received an answer. The Agent stated that last weekend someone answered the door when they knocked, however it was not the Purchaser.

The Purchaser responded by stating that the person the former Tenants met upstairs was an Airbnb guest, and that the person who answered the door last week was them. They also denied ever advising the former Tenants that their mother would be occupying any portion of the home.

Analysis

I accept the Purchaser's affirmed testimony that they have resided in the single-family home in which the rental unit is located, since shortly after they took possession on March 1, 2022. I also accept that they completed renovations in the home during that time, living in the upstairs unit while renovating the basement unit, and vice versa. Although the Agent stated that the Tenants' do not believe that the Purchaser has ever occupied the rental unit, the Tenants did not appear at the hearing to provide testimony under oath or affirmation, and subject to cross-examination. As a result, I prefer the Purchaser's affirmed testimony in this regard, over the Agent's arguments and testimony.

However, Residential Tenancy Policy Guideline (Policy Guideline) #50 states that a landlord cannot end a tenancy for the stated purpose of occupying the rental unit themselves, and then re-rent the rental unit, or a portion thereof, without first having occupied it for at least six months, as set out in *Blouin v. Stamp*, 2011 BCSC411. Policy Guideline #2a also states that a landlord cannot reclaim a rental unit and then reconfigure the space to rent out a separate, private portion of it, and that 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. It is unclear to me if the Purchaser took over possession of the rental unit so that they could occupy only that portion of the home, or so that they could have the entire single-family home for their own use. I will deal with the former scenario first.

Although I accept that the Purchaser moved into the single-family home on or shortly after March 1, 2022, they stated that they moved back and forth between the basement unit and the upstairs unit while doing renovations. No documentary evidence regarding the renovations was submitted. Further to this, no documentary evidence was submitted by the Purchaser for my consideration regarding when they moved into the basement unit, which was the rental unit, and how long they lived there, versus when they moved into the upstairs unit and how long they lived there. As a result, I find that I am unable to conclude that the Landlord occupied the basement rental unit within a reasonable period after the effective date of the Two Month Notice, February 28, 2022, and resided there for at least six months duration thereafter.

If the second scenario applies, and the Landlord took over possession of the rental unit because they intended to use the entire single-family home as their own living space, then I find that the Purchaser failed to comply with the stated grounds for ending the

tenancy set out on the Two Month Notice when they began renting out the upper portion of the single family home on a short-term rental site at the beginning of August 2022, which is within 6 months after the effective date of the Two Month Notice, and contrary to the Policy Guideline(s) set out above.

Based on the above, I find that regardless of whether the Two Month Notice was served because the Purchaser intended to only occupy the basement rental unit, or because they intended to use the entire single-family home as their own living space, they have failed to satisfy me on a balance of probabilities that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and that the entirety of either the basement rental unit, or the single-family home in which it is located, was used exclusively for that stated purpose for at least 6 months' duration thereafter. As a result, and pursuant to section 51(2) of the Act, I grant the Tenants' Application seeking 12 times the monthly amount of rent payable under the tenancy agreement at the time the tenancy ended, which the parties agreed was \$1,000.00.

As the Former Tenants were successful in their Application, I also grant them recovery of the filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant the Tenants a monetary order in the amount of \$12,100.00 and I order the Purchaser to pay this amount to the Former Tenants.

Conclusion

The Tenant's Application is granted.

Pursuant to section 67 of the Act, I grant the Former Tenants a monetary order in the amount of **\$12,100.00**. The Former Tenants are provided with this order in the above terms and the Purchaser must be served with this order as soon as possible. Should the Purchaser fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court

I believe that this decision has been rendered within 30 days after the close of the proceedings, in accordance with section 77(1)(d) of the Act and the *Interpretation Act* with regards to the calculation of time. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my

authority to render them, are affected if this decision and the associated order were issued more than 30 days after the close of the proceedings.

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

Dated: June 2, 2023

Residential Tenancy Branch