



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking monetary compensation for the landlord's failure to comply with the *Residential Tenancy Act*, by failing 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.

Both tenants and an agent for the landlord attended the hearing, and each gave affirmed testimony. The tenants also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

At the commencement of the hearing I determined that the landlord has provided all evidence to the tenants by registered mail, but only some of the tenants' evidence had been provided to the landlord. Any evidence that a party wishes to rely on must be provided to the other party, even if they already have a copy, because it is important for all parties to know what evidence is before me. Therefore, all evidence of the landlord, and the tenants' evidence that has been provided to the landlord, has been reviewed, and all evidence that I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the landlord has accomplished the stated purpose for ending the tenancy 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's agent testified that this fixed-term tenancy began in 2018 or 2019 and reverted to a month-to-month tenancy after a year. Rent in the amount of \$2,840.00 was payable on the 1st day of each month by the end of the tenancy, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,400.00, all of which has been returned to the tenants, and no pet damage deposit had been collected. The rental unit is a house which also contains a studio suite that the tenants rented to another person.

The landlord's agent further testified that on May 29, 2022 the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property by personally handing it to one of the tenants, and a copy has been provided for this hearing. It is dated May 29, 2022 and contains an effective date of vacancy of July 31, 2022. 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. A copy was also served to the tenants by email, however the tenants sent an email asking to leave by the end of August, 2022 because the tenants had to give notice to the sub-tenant.

The landlord agreed and issued another 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 29, 2022 and contains an effective date of vacancy of August 31, 2022, containing the same reason for ending the tenancy.

The landlord's son was supposed to move in, but due to a change of circumstances of the tenants, the parties signed a Mutual Agreement to End Tenancy. As a result, the landlord's son did not move in. After the tenants moved out, the landlord renovated and put the home for sale, which was re-rented a couple of months ago for \$3,400.00 per month. Two mutual agreements to end the tenancy were signed by the parties. The landlord's agent does not know when the first one was signed, but the other was signed on August 29, 2022. Copies of both agreements have been provided for this hearing. The first is effective June 30, 2022, which also states: "sub tenant to move out August 15, 2022." The tenants had a conversation with the owner about the sub-tenant who was still paying rent to the tenants for July, 2022. The tenants got free rent for June, July and August, 2022.

The first tenant (CL) testified that rent for June was paid on the 1st of the month, as always, but not for July, 2022.

The tenant did not understand the Mutual Agreement, but was told that it had to be signed for safety reasons because of the sub-tenant.

The tenants moved out on June 26, 2022 and the sub tenant moved out on August 15, 2022. The landlord said his son was moving in, but didn't, and a For Sale sign was placed on the property. The Mutual Agreement was between the landlord and the sub-tenant. It was not fair. The tenant thought that the tenant was signing it about the sub-tenant and would not have signed it if it was for the tenants.

The tenants did not collect rent from the sub-tenant for July or August.

The second tenant (ML) testified that the tenants told the landlord that the sub-tenant had to stay for a bit longer and the landlord agreed. The landlord also said that the Mutual Agreement was for the sub-tenant. The first paragraph on the Mutual Agreement to End Tenancy is barely readable.

The tenant's witness is the tenants' daughter who testified that the tenancy ended because the landlord was offering the house to a family member so the tenants had to move out. The parties came to an agreement so the tenants moved out at the end of June, 2022, for the landlord's son.

Analysis

I agree with the tenant that the copy of the Mutual Agreement to End Tenancy, a Residential Tenancy Branch form, which has been provided for this hearing has a greyed area that may have been difficult to read. It states: "NOTE: This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. If you have any questions about tenant or landlord rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Park Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign." It is signed by the landlord and one of the tenants with an effective date of vacancy of June 30, 2022, and states, "sub Tenant to move out Aug 15/2022."

The other mutual agreement is dated August 29, 2022 stating that the parties agreed to end the tenancy as of June 30, 2022, and the landlord will give compensation of 1 month rent for July, 2022. It also states that the tenant had returned the keys and the

landlord has returned a deposit. It is not on a form provided by the Residential Tenancy Branch, but typewritten.

The Residential Tenancy Branch form is also effective on June 30, 2022, but adds that the sub-tenant is to move out on August 15, 2022. The tenants both testified that the landlord assured the tenants that the reason for the mutual agreements to end tenancy were for the sub-tenant to vacate at a later date. The tenants vacated on June 30, 2022 in accordance with the Two Month Notice to End Tenancy for Landlord's Use of Property.

In the circumstances, I am satisfied that the tenants did not intend to mutually agree to end the tenancy after they had already moved out. The Residential Tenancy Branch form of the mutual agreement is not dated, however considering that the effective date of vacancy is the same as the other form that was signed on August 29, 2022, and considering that the Residential Tenancy Branch form indicates "sub Tenant to move out Aug 15/2022," I accept the testimony of the tenant, and I am satisfied that the tenants did not lose their right to compensation.

The landlord renovated after the sub-tenant moved out, put the house up for sale, and subsequently re-rented for \$3,400.00. The tenants had been paying \$2,840.00, a significant increase. I find that to be a classic "renoviction," and I find that the tenants are entitled to compensation in the amount of 12 times the monthly rent, or \$34,080.00 (12 X \$2,840.00).

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 in the amount of \$34,180.00. The landlord must be served with the order, which may be filed for enforcement in the Provincial Court of British Columbia, Small Claims division 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 landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$34,180.00.

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 30, 2023

Residential Tenancy Branch