



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation related to a Notice to End Tenancy for Landlord's Use of Property pursuant to section 51;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

Issues

Is the tenant entitled to a monetary order for compensation relating to a Notice to End Tenancy for Landlord's Use of Property?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

This tenancy for this residential house began in 2002. The monthly rent at the end of the tenancy was \$1300.00.

On April 5, 2022, the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") with an effective date of June 30, 2022. The notice was issued on the grounds that the landlord's son intended to occupy the rental unit.

On April 14, 2022 the tenant provided written notice that she would be vacating early at the end of May 2022. The tenant proceeded to vacate the rental unit on May 27, 2022.

The tenant is claiming an amount equivalent to twelve times the monthly rent as compensation for the landlord not using the rental property for the stated purpose.

The landlord's son D.B. and his wife S.B testified as follows:

- On May 27, 2022 the tenant left the keys in the mailbox and did not participate in any walk through inspection.
- Their intention was to move in right away with their one-year-old daughter; however, the tenant had left the house in an unlivable condition.
- On May 30, 2022 they made a claim with their insurance company (copy of claim submitted as evidence).
- As per the insurance claim there was \$50,000 of damage and repairs required.
- The insurance company took some time to first start the claim and then they could not move in until insurance claim and repairs were finalized which was out of the landlord's control.
- While insurance company was doing repair work related to the claim, they undertook some additional renovations on their own initiative such as changing windows and doors.
- December 1, 2022 they moved in and have been living there since.
- A BC Hydro account set-up notification for December 1, 2022 was submitted as evidence.
- The tenant is free to come see at any time that they are residing on the property.

The tenant C.M. and her husband M.M. testified as follows:

- C.M. was a tenant in this property over 20 years.
- The insurance claim states the reason for claim as "vandalism".
- There is no evidence of vandalism in the pictures submitted by the landlord and those contained in the insurance report.
- They did not wilfully damage the property.
- There was not any evidence of structural damage in the evidence submitted.
- The landlord has not submitted any before or after pictures to support \$50,000 of damage or repairs.

- The house was not “unlivable” as stated by the landlord.
- They were alerted by a neighbor that renovations were being done.
- It is not reasonable that the landlord took 6 months to do renovations or repairs and move-in.
- They have not seen any evidence that the landlord’s son has moved in aside from the BC Hydro notification which does not contain any address information.

Analysis

Section 51 (2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

The tenant for the most part took issue with the fact that the landlord took 6 months to occupy the rental unit and argued that this was unreasonable. The tenant did not really deny that the landlord’s son and his family moved in on December 1, 2022 although she stated she did not have any proof of this actually happening. The tenant did not submit any proof that this hadn’t happened either. There was no evidence in this case that the landlord had re-rented or attempted to re-rent or sell the property. Based on the above, I accept the sworn testimony of the landlord’s son and his wife and the BC Hydro connection notification and find the landlord did in fact move-in on December 1, 2022.

The question then is whether this was within a reasonable time after the effective date of the notice. The landlord’s son and his family occupied the rental unit on December 1, 2022 which is five months after the effective date of the notice.

There is nothing in the Act that prevents a landlord from carrying on extensive renovations prior to occupying a rental unit for their own use. In fact, this is a very common practice. The landlord is not required to move-in as is or only do cosmetic repairs. Much was made in this hearing on whether the rental unit was “unlivable” or “vandalized” by the tenant; however, I find this was mostly irrelevant to the issue before me. Regardless, the landlord still has a right to carry on whatever repair or renovation work they desire to make the unit suitable for their own occupancy. The tenant’s own evidence was that they or neighbors’ witnessed renovation work taking place while the unit sat empty. Given that the landlord filed a claim through insurance, and then also

undertook additional renovation work themselves, I find five months was a reasonable period for the landlord to accomplish the stated purpose of ending the tenancy.

The tenant's application is dismissed without leave to reapply.

As the tenant was not successful in this application, the tenant is not entitled to recover the filing fee paid for this application.

Conclusion

The tenant's application is dismissed 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