



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s March 27, 2023, application to the Residential Tenancy Branch for:

- (i) compensation for monetary loss or other money owed under section 67 of the Act;
- (ii) compensation because the tenancy was ended as a result of a Two Month Notice to End Tenancy, and the landlord has not used the rental unit for the stated purpose under section 51 of the Act; and
- (iii) authorization to recover the cost of the filing fee under section 72 of the Act.

Preliminary Issue - Unrelated Claims

Rules of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the tenant’s claim regarding compensation under section 51 of the Act, is not sufficiently related to the tenant’s other claim to warrant that they be heard together. I exercise my discretion to dismiss the tenant’s other claim with leave to reapply and will deal only with the claim regarding compensation under section 51 of the Act.

Issues

1. Is the tenant entitled to compensation?
2. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began June 1, 2020, and ended on June 10, 2021. Rent was \$1,325.00 due on the first day of the month. There is a copy of the written tenancy agreement in evidence.

The tenant submitted as evidence a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), which had an effective date of June 30, 2021. The reason stated for the Notice was because the rental unit will be occupied by the landlord or the landlord's spouse.

The landlord affirmed that:

- the landlord occupied the rental unit the day after the effective date of the Notice, which was June 30, 2021.
- the landlord served the Notice on the tenant on April 27, 2021.
- on April 28, 2021, the tenant sent an email to the landlord requesting more details regarding the reasons for the Notice. The landlord informed the tenant that the rental unit will be used as a home office and a guest room.
- the landlord used the rental unit as a home office from July 1, 2021, to April 30, 2022, which is longer than 6 months. The landlord volunteers with the Canadian Scottish Regiment Museum. Specifically, the landlord assists with exhibit designs. The landlord needed a large space to do this work as the model exhibit designs are large. The landlord submitted photographic evidence of the rental unit being used as a home office, which included what appears to be model exhibit designs. The landlord needed a home office because the Canadian Scottish Regiment Museum temporarily closed during the COVID pandemic. The landlord submitted as evidence a letter from the Canadian Scottish Regiment Museum confirming that the museum was closed due to COVID, and that the landlord needed a private home office to complete work for the museum.
- the landlord used the rental unit as a guest room when the landlord's son was visiting the landlord. The landlord's son used the rental unit from January 21,

2022, to January 24, 2022. The landlord submitted as evidence the landlord's son's flight ticket itinerary, which were consistent with those dates.

- the rental unit was the basement suite in the landlord's residence. The landlord lives in the upstairs unit.

The tenant affirmed that:

- the tenant does not dispute that the landlord had occupied the rental unit from July 1, 2021, to April 30, 2022.
- the tenant, however, believes the landlord was not acting in good faith when the landlord issued the Notice. In particular, the tenant believes the real reason the landlord had issued the Notice was because the landlord and tenant were having disagreements about the rental unit windows being open.

Analysis

Section 51(2) of the Act states that, if a tenant is given a notice to end tenancy under section 49 of the Act [Landlord's notice: landlord's use of property], a landlord must pay the tenant an amount that is equal to 12 times the monthly rent if:

- steps have not been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy; or
- the rental unit is not used for that stated purpose for at least six months' duration.

I note that this section does not reference the landlord's motive for issuing the Notice. There is no requirement that the Notice be issued in bad faith before a compensation claim can be substantiated. Whether the Notice is issued in good faith is relevant only to the validity of the Notice. A landlord's intention when issuing a Notice may be challenged if a tenant wants to have a Notice cancelled and wants to remain in the rental unit. This is not the case here as the tenancy is already over. Therefore, I find that the tenant's submission in regard to the landlord not acting in good faith is irrelevant to this application.

In addition, according to the case of *Koyanagi v. Lewis*, 2021 BCSC 2062, the Supreme Court of BC found at paragraph 30 that:

Using a space within a residence for a home office is using it as part of the living space. Home offices are a common feature of a residence, especially, though certainly not exclusively, since the COVID-19 pandemic. Simply because a space in the home is being used as a home office does not mean the space is not being used as part of a living accommodation or living space.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the tenant has not established the tenant's claim for compensation for the following reasons:

- The reason stated for the Notice was because the rental unit will be occupied by the landlord or the landlord's spouse.
- The landlord's evidence establishes that the landlord used the rental unit as a home office from July 1, 2021, to April 30, 2022, which is longer than six months.
- The case of *Koyanagi v. Lewis*, 2021 BCSC 2062 confirms that using a space within a residence for a home office is using it as part of the living space.
- The landlord occupied the rental unit one day after the effective date of the Notice, which was June 30, 2021.
- The tenant does not dispute that the landlord had occupied the rental unit from July 1, 2021, to April 30, 2022.

Based on the above, I am dismissing the tenant's application for compensation under section 51 of the Act.

As the tenant was not successful in its application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The 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: July 01, 2023

Residential Tenancy Branch