



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Code: MNEVC

Introduction

The Tenant seeks compensation pursuant to section 51.1 of the *Residential Tenancy Act*.

Issue

Is the Tenant entitled to compensation?

Evidence and Analysis

While I have carefully considered the parties' testimony and documentary evidence, I will only reference and include that which is necessary to explain my decision.

It should be noted that the Tenant had included their son as a second applicant in this application, but there is no evidence before me to find that they have any legal standing in this dispute. The son does not appear anywhere on the tenancy agreement. For this reason, the second applicant has been removed as a party to this legal dispute.

The tenancy began on June 1, 2015, and ended, both by way of a *Two Month Notice to End Tenancy for Landlord's Use of Property* and by a vacate clause in the tenancy agreement, on April 30, 2022. Because this application was made seeking compensation under section 51.1 of the Act, section 51 (as it would relate to the notice to end tenancy) of the Act will not be considered.

Rent was \$1,735 at the time the tenancy ended. A copy of a written tenancy agreement, along with a copy of the Notice, were in evidence. The reason that the tenancy was ending was that the Landlord's son would occupy the rental unit.

The Tenant makes this application on the basis that, as alleged in the particulars, instead of the Landlord moving her son into the rental unit for a period of six months, she rented out the rental unit to new tenants at a higher amount of rent.

The Tenant testified that they moved out on March 10, 2022. They returned to the rental unit on September 26, 2022, and discovered that a gentleman by the name of Bobby was living in the property. Bobby—who did not appear as a witness in these proceedings and who did not provide any form of affidavit evidence—purportedly told the Tenant that he had moved in “a couple of months ago.”

The Tenant returned to the rental unit again on October 12 and 14, 2022, partially to solicit Bobby's help with her case. However, Bobby was less-than-interested in assisting, as he apparently had a solid and good relationship with the Landlord.

The Landlord's son testified that he moved into the rental unit on March 12 but not “officially” until March 14. On this point, there was some discrepancy on when the Tenant vacated and when the Landlord's son moved in. The Tenant argued that the son could not have move in as early as he said, given that the Tenant was still in the process of moving out.

However, for the reasons set out below, a matter of a few days' “overlap” is not sufficiently relevant in determining when the six-month period begins. At the end of the day, the Tenant testified both during her testimony and under cross-examination that they moved out on March 10, 2022.

The son testified that he lived in the rental unit until mid-September 2022, at which point he physically moved into another rental unit on the property on September 15, 2022. The Landlord submitted signed affidavits from two of the son's friends, and an affidavit from the Landlord, attesting to having attended to the rental unit to enjoy conversation, meals, and video gaming, with the son.

Photographs of the meals, along with a photograph of the son playing a VR game, were attached to the signed and sworn affidavits as exhibits.

In rebuttal, the Tenant questioned the quantity of photographs provided as evidence, both in terms of the very narrow range of dates and that the date and location could have been altered. However, when I asked whether they were suggesting that the evidence was fraudulent in nature, they answered that it was not.

The Law and Analysis

The claim for compensation is made under section 51.1(1) of the Act, which states:

- (1) Subject to subsection (2) of this section, if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
 - (a) steps have not been taken, within a reasonable period after the date the tenancy ended, to satisfy the prescribed circumstance, or
 - (b) the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under

section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.

This section must be read in conjunction with section 13.1 of the *Residential Tenancy Regulation*, B.C. Reg. 171/2002, which states that:

- (1) In this section, "close family member" has the same meaning as in section 49 (1) of the Act.
- (2) For the purposes of section 97 (2) (a.1) of the Act [*prescribing circumstances when landlord may include term requiring tenant to vacate*], a circumstance in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate the rental unit at the end of the term is that the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term.
- (3) For the purposes of section 97 (2) (a.2) [*prescribing period of time for which a circumstance prescribed under paragraph (a.1) must be satisfied*] of the Act, the period of time for which the circumstance prescribed under paragraph (a.1) [*prescribing circumstances when landlord may include term requiring tenant to vacate*] must be satisfied is 6 months.

While the tenancy agreement included a vacate clause indicating the tenancy end date of April 30, 2022, the tenancy ended earlier on March 10, 2022, when the Tenant vacated the rental unit. (See section 44(1)(d) of the Act.)

In this dispute, the Landlord's evidence—consisting of sworn affidavits from two third parties, the Landlord, and the Landlord's son, and photographs of the friends' attendance at the rental unit, along with date and geolocation information—persuades me to find, on

a balance of probabilities, that the prescribed circumstance (that is, occupation by the Landlord's son) was accomplished within a reasonable period after the tenancy ended.

Indeed, the Landlord's son moved into the rental unit within days of the tenancy ending. "Officially," as the son put it, on March 15, 2022. Further, the evidence persuades me to conclude, on a balance of probabilities, that the rental unit was used in a way that satisfied the prescribed circumstance for a period of six months.

I place little weight on the Tenant's hearsay evidence of Bobby's remark about moving in "a couple of months ago." Bobby did not provide any sworn affidavits, as the Landlord's witnesses had, nor did Bobby attend to the hearing to provide testimony. There is also, I should note, no evidence provided by the Tenant that supports an argument that Bobby moved into the rental unit in a period of less than six months from March 15, 2022.

The Tenant herself did not attend to the rental unit until September 26, 2022, a week after the six-month period had elapsed.

Certainly, it is not lost on me that the timing of the Landlord's son's "official [physical] swap" (that is, when he moved out of the rental unit) coincides exactly with the six-month mark beginning on March 15, 2022, but even then, the six-month period likely began on September 10, which is a full six months after the Tenant vacated.

In any event, there is no evidence before me to question the son's evidence, which was consistent with other documentary evidence, that the son occupied the rental unit for the prescribed period of time.

For these reasons, I am unable to find that the Tenant has proven their claim for compensation under section 51.1 of the Act and their application must be dismissed.

Conclusion

The application is hereby dismissed, without leave to reapply.

This decision is final and binding, except where otherwise permitted under the Act or the *Judicial Review Procedure Act*, RSBC 1996, c. 241. This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: July 19, 2023

Residential Tenancy Branch