Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: MNETC FFT

Introduction

The Tenant seeks $19,900.00 in compensation against the Landlords pursuant to sections 51(2) and 72 of the *Residential Tenancy Act* (the "Act").

Issue

Is the Tenant entitled to compensation?

Background, Evidence, and Analysis

I have considered the parties' testimony, arguments, submissions, and documentary evidence, but will only refer to evidence that I find relevant and necessary to explain the decision.

The tenancy began June 15, 2020, and ended May 15, 2022. Monthly rent was $1,650.00. There was a written tenancy agreement in place during the tenancy.

A *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") was served on April 4, 2022, by the Tenant's landlord. It should be noted that the Tenant's landlord sold the rental unit to the purchasers, referred to as the "Landlords" in this application. A copy of the Notice was in evidence and the reason for it being served was that the purchaser intends "in good faith to occupy the rental unit."

As of the date of the Tenant's application, the Tenant argued and submitted that the rental unit remained vacant and unoccupied. Neither party disputes these facts.

What the parties dispute is the meaning of the verb "occupy."

This application for compensation is made under section 51(2) of the Act, which states:

> Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that
>
> (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
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> (b) the rental unit, except in respect of the purpose specified in section 49(6)(a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The onus falls upon the Landlords to prove the two above-referenced requirements. First, I will briefly address the Tenant's argument that the Landlords have not provided sufficient evidence covering the entire six-month period. I respectfully disagree. There is, I find, sufficient direct and circumstantial evidence proving that the Landlords began to set up a woodworking workshop (the "workshop") shortly after taking possession of the property, and that the rental unit—a laneway house, detached from the main house—was used, and continues to be used, as a workshop.

I find that it would be highly improbable that the Landlords could have somehow rented out the space for brief periods of time within the six-month period, and I cannot see them moving all of their workshop materials out of the laneway house only to move it all back in. In other words, it is my finding that the Landlords have provided sufficient evidence for me to find that they used the rental unit for the stated purpose over a six-month-plus duration.

Turning now to the crux of the dispute, the Tenant argues that “occupy” does not include the use of the rental unit as a garage and a workshop. They further argued that not all the rental unit is or was being used as a workshop, and that parts of the laneway house were not really used for anything.

Conversely, Landlords’ counsel argued that after the Landlords purchased the property, they had no interest in being landlords and no intention to “live” in the laneway house. What they fully intended to do was to occupy the rental unit as a workshop. The Landlords are “avid do-it-yourselfers.” Moreover, the rental unit was not, counsel argued, left empty, but used as a workshop.

The workshop was covered by the Landlords’ property insurance policy, and it was filled with tools, table saws, and so forth. Around the date this hearing was convened, the Landlords were busy working on a few customized sit-stand desks.

As is the often the case with legislation, the important words within are rarely defined. Phrases and words are frequently defined through a process of legal precedent and policy guidelines.

First, this is not a case of what is often referred to as “vacant possession.” The Landlords did not evict the Tenant only to leave the rental unit vacant and unused. Nor, it is noted, did the Landlords re-rent the laneway house to a new tenant. Rather, they used it, and continue to use it, as a workshop.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, page 3, version July 2021, states (on page 2) that

> the implication is that "occupy" means "to occupy for a residential purpose." (See for example: *Schuld v. Niu,* 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

I am persuaded that the Landlords' use of the laneway house as a woodworking workshop is occupancy for a residential purpose. And, the workshop may be part of their living space, I further conclude. A workshop is analogous to a recreation room, which is a policy-defined purpose for reclaiming a rental unit as a "living space" (ibid, p. 3). Moreover, this is not a case of the Landlords just using a portion of the laneway house and then re-renting the remaining portion. And, that there remained portions of the rental unit not actively used as the workshop does not, in my mind, nullify the fact that the rental unit is being occupied as a workshop.

My conclusion above in making a finding of law that the Landlords' workshop is part of their living space—and therefore meeting the definition of "to occupy for a residential purpose"—is grounded in the Supreme Court's decision in *Koyanagi v. Lewis,* 2021 BCSC 2062. In *Koyanagi,* a judicial review of one of my previous decisions, in fact, the court disagreed with my finding that the partial use of a basement suite for a home office was not a living space. Rather, the court went on to say that (paras. 30-33):

> [...] the arbitrator's narrow interpretation of "occupy as part of the residence" so as to exclude a home office is patently unreasonable. So too is his narrow interpretation of "living space" or "living accommodation." 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. [...] The term “home office” itself encapsulates the fact that it is an office that exists within a person’s living space. [...] the Landlord is entitled to possession of the entirety of the basement suite even though it was only going to use a portion of it for the home office.

Whether a landlord occupies some, or all, of a rental unit as a home office, or a home workshop, leads to the same conclusion: occupancy is achieved when the landlord uses the space as a recreation room, a home office, or, in this case, a woodworking workshop.

Having found that the Landlords have established that the occupancy was accomplished within a reasonable period after May 31, 2022 (the effective date of the Notice) and, the rental unit was used for occupancy for at least six months, beginning within a reasonable period after May 31, 2022, it therefore follows that the Landlords are not required to pay compensation under section 51(2) of the Act.

The Tenant’s application is dismissed, along with the claim to recover the cost of the application fee.

Conclusion

The application is hereby dismissed, without leave to reapply.

Dated: July 11, 2023

Residential Tenancy Branch