



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing was convened by way of conference call on September 27, 2023, having been adjourned from September 15, 2023 at the request of the landlord, and my Interim Decision dated September 15, 2023 was provided to the parties. The tenant has applied for monetary compensation for the landlord's failure to act in good faith and 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.

On September 27, 2023 the tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing the landlord indicated that the tenant has not provided all of the tenant's evidentiary material 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's important for all parties to know what is before me. Since the tenant has not provided all of the evidence to the landlord, I decline to consider the evidence that was not provided to the landlord. All other evidence has been reviewed and is considered in this Decision. The landlord has not provided any evidentiary material despite being granted an adjournment to prepare for this hearing.

Issue(s) to be Decided

Has the landlord established that the landlord has acted in good faith and used the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property?

Background and Evidence

The landlord testified that he purchased the rental property on July 9, 2021 and the tenant was a tenant in the rental unit at that time. The landlord did not ask for vacant possession. Rent in the amount of \$1,200.00 was payable on the 1st day of each month and there are no rental arrears. The landlord received a security deposit in the Statement of Adjustments in the amount of \$600.00, all of which was returned to the tenant, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord resides upstairs.

The landlord further testified that he served a Two Month Notice to End Tenancy For Landlord's Use of Property dated July 26, 2022 which contained an effective date of vacancy of September 30, 2022. The reason for issuing it stated: 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. The tenant moved out as a result of the Notice, however departed on September 1, 2022.

The landlord's original plan was for his son to go to university. The landlord's son has autism and the landlord wanted to keep him in the landlord's house. When the landlord went to move his son in, the landlord saw someone lurking in the yard on his security camera. The landlord did not notify police, but decided that he could not have his son there. The landlord used the rental unit for his own personal use commencing on October 1, 2022 and re-rented the rental unit commencing June 1, 2023.

The tenant testified that after he vacated the rental unit in September, 2022 he checked with neighbours on a regular basis, who said that they didn't see anyone move into the suite.

The tenant received compensation of 1 month's rent by not paying rent for the last month of the tenancy.

Analysis

Where a tenant makes such an application, the onus is on the landlord to establish that the landlord has complied with the *Residential Tenancy Act* and acted in good faith using the rental unit for the purpose contained in the Two Month Notice to End Tenancy For Landlord's Use of Property and for at least 6 months duration. The law also states

that I may excuse the landlord from accomplishing the stated purpose if extenuating circumstances exist that prevented the landlord from doing so.

In this case, the landlord has not provided any evidence. The only evidence I have of extenuating circumstances is the testimony of the landlord stating that his son is autistic and after seeing someone in the yard, the landlord could not allow his son to stay in the rental unit. I don't accept that. I see no evidence to support that the circumstances prevented the landlord from complying with the *Act*. The landlord knew prior to the date the Notice to end the tenancy was issued that his son was autistic. The landlord also lives in the same house.

In the evidence, I find that the landlord has not acted in good faith, and the tenant is entitled to compensation in the amount of 12 times the monthly rent (\$1,200.00 x 12 = \$14,400.00).

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$14,500.00. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$14,500.00.

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: September 27, 2023

Residential Tenancy Branch