Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: MNETC, FFT
LL: MNRL, MNDCL, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*").

The Tenants' Application for Dispute Resolution was made on January 30, 2023 (the "Tenants' Application"). The Tenants applied for the following relief, pursuant to the *Act*:

- a monetary order for compensation relating to a Two Month Notice to End Tenancy for Landlord's Use of the Property; and
- an order granting the recovery of the filing fee

The Landlords' Application for Dispute Resolution was made on February 25, 2023 (the "Landlords' Application"). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for damage, compensation, or loss;
- a monetary order for unpaid utilities; and
- an order granting recovery of the filing fee.

The Tenant A.K., the Tenant's Advocate B.K, and the Landlords attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Notice of Hearing and documentary evidence packages. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The original hearing took place on June 12, 2023 and did not complete within the schedule time. The hearing was adjourned and reconvened on October 10, 2023.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order for compensation and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?
2. Are the Landlords entitled to a Monetary Order for compensation relating to unpaid utilities, damage, compensation, and/or loss, and recovery of the filing fee, pursuant to Section 67, and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on January 1, 2020. Near the end of the tenancy, the Tenants were required to pay rent in the amount of $3,400.00 which was due to the Landlords on the first day of each month. The Tenants paid a security and pet damage deposit each in the amount of $1,700.00. The parties agreed that the Landlords have returned both deposits to the Tenants. The Tenancy ended on June 30, 2022.

Tenants Claim

The parties testified and agreed that the tenancy ended after the Landlords served the Tenants with the Two Month Notice dated April 22, 2022 with an effective vacancy date of June 30, 2022 (the "Two Month Notice"). The Landlords' reason for ending the tenancy on the Two Month Notice was;

"*The rental unit will be occupied by the landlord or the landlord's spouse.*"

The Tenants are claiming compensation in the amount of $40,800.00 which represents twelve times the monthly rent. The Tenants did not dispute that the Landlord occupied the rental unit within a reasonable amount of time and for at least six months. Instead, the Tenants are claiming that the Landlords had an ulterior motive with service the Two

Month Notice. The Tenants are claiming that the Landlord gained vacant possession to conduct renovations and to sell the rental unit.

The Landlords confirmed that they began moving into the rental unit on July 1, 2022 and their moving truck arrived on July 14, 2022. The Landlords provided a receipt in support. The Landlords stated that they performed cosmetic repairs, while they occupied the rental unit full time. The Landlords provided time stamped photos of them residing in the rental unit as well as utility bills in support. The Landlords stated that their employment circumstances changed which required them to relocate to the mainland. As such, they listed their home for sale in November 2022. The Landlords sold the rental unit and moved out on March 30, 2023.

The Landlords stated that they accomplished the stated purpose of the Two Month Notice by moving into the rental unit immediately after the Tenants vacated and occupied the rental unit for 8 months before moving to the mainland for work.

The Tenant confirmed during the hearing that they are not disputing that the Landlord occupied the rental unit continuously from July 2022 to March 2023. The Tenant is of the position that the Landlords did not serve the Two Month Notice in good faith. The Tenants stated that there is a two part test where the Landlords are not only obligated to accomplish the stated purpose of the Two Month Notice, but also have good faith intentions to occupy the rental unit for their own use. The Tenant stated that the Landlords have always intended to move in, conduct some cosmetic renovations, and sell the rental unit.

Landlords' Claim

The Landlords are claiming monetary compensation in the amount of $1,633.80. The Landlords outlined their monetary claims in their monetary order worksheet which has been reproduced below;

The Landlords are claiming a total of $619.50 relating to gardening services. The Landlords provided three bills corresponding to April, May, and June services. The parties agreed that the Tenants are responsible for maintaining the yard at the rental property. The parties agreed that the Tenants and the Landlords employed a gardener to complete the maintenance and the parties would split the bill each month.

The Tenants stated that they feel as though they were not required to maintain a professional standard of maintenance in the yard, only a reasonable one. As such, the

Tenants indicated that they did not wish to continue with the professional gardening services and instead, wished to maintain the yard on their own for the last few months of the tenancy. The Tenants provided an email addressed to the Landlords outlining this intent.

The Landlords stated that they continued to have the gardener attend the rental unit and are claiming for half of the invoices as the yard was not being maintained to a reasonable standard. The Tenants provided an email from the neighbour indicating that as of May 26, 2023 there were no concerns with the yard at the rental property.

The Landlords are also claiming for a total of $1,014.30 for junk removal. The Landlords stated that the Tenants left some of their possession in the rental unit at the end of the tenancy which required disposal. The Landlords provided a signed document from the Tenant providing consent to dispose of their possession and invoices in support.

The Tenant stated that they did not leave any possessions, instead the items disposed of by the Landlords were their own possessions they had stored in the basement prior to the commencement of the tenancy. The Tenant referred to the move out condition inspection report which did not indicate any issues at the end of the tenancy. The parties agreed that the Landlords returned the deposits to the Tenant in full. The Tenant stated that the move in inspection report noted that the Landlord was meant to clean out the basement. The Tenant stated that the Landlords never removed these items and suspects that the Landlords paid to dispose of these items at the end of the tenancy.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Tenants' Claim

According to Section 51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

> (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
(2) 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
(a) 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
(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.
(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from
(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

According to the Residential Policy Guideline 2A requires the Landlord to Act in good faith;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann,* 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

> If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.
>
> The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2). Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

The Tenants are claiming compensation in the amount of $40,800.00 which represents twelve times the monthly rent. The Tenants did not dispute that the Landlord occupied the rental unit within a reasonable amount of time and for at least six months. Instead, the Tenants are claiming that the Landlords had an ulterior motive with service the Two Month Notice. The Tenants are claiming that the Landlord gained vacant possession to conduct renovations and to sell the rental unit.

In this case I find that the Landlords served the Two Month Notice to the Tenants as they intended to occupy the rental unit for their own use. I find that the compensation applied for by the Tenants under Section 51(2) of the Act relates to cases where the Landlords have not acted in good faith and have not accomplished the stated purpose of the Two Month Notice. Had the Landlords re-rented the rental unit instead of occupying it for 6 months, then the Landlords would not be acting in good faith and would have had an ulterior motive in serving the Two Month Notice.

Instead, I accept that the parties agreed that the Landlords occupied the rental unit shortly after gaining vacant possession and continued to occupy the rental unit for 8 months before the rental unit sold. I find that the Landlords have accomplished the stated purpose of the Two Month Notice. I find that the Landlords are at liberty to do what they want with the rental unit after they have accomplished the stated purpose of the notice. I dismiss the Tenant's Application in its entirety without leave to reapply.

Landlords' Claim

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act.* An applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

The Landlords are claiming a total of $619.50 relating to gardening services. The Landlords provided three bills corresponding to April, May, and June services. I accept that the Tenants were responsible for maintaining the yard at the rental property. While the Tenants had agreed to pay for half of the professional gardening services during the tenancy, I find that this was not necessarily required under the tenancy agreement. I find that the Tenants were at liberty to conduct their own gardening at the rental property to maintain a reasonable standard.

I find that the Tenants expressed to the Landlords their intent to discontinue these services, however, the Landlords chose to continue employing the gardening services. I find that the Landlords did not mitigate their loss, nor did they demonstrate that the yard was not maintained to a reasonable standard by the Tenants. As such, I dismiss this claim without leave to reapply.

The Landlords are also claiming for a total of $1,014.30 for junk removal. The Landlords stated that the Tenants left some of their possession in the rental unit at the end of the tenancy which required disposal. The Tenants stated that the items belonged to the Landlords. I find that the Landlords provided insufficient evidence to demonstrate what exactly was disposed of. I find that the move out condition inspection report makes no mention of junk being left behind at the end of the tenancy and the Landlord returned the full deposit to the Tenants. As such, I find that the Landlords have provided insufficient evidence to support their claim for junk removal and dismiss this claim without leave to reapply.

As the Landlords were not successful with their Application, I find that they are not entitled to the return of the filing fee.

Conclusion

Both the Tenants' and the Landlords' Applications are dismissed in their entirety 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: October 11, 2023

Residential Tenancy Branch