



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed November 24, 2022, wherein the Tenant sought monetary compensation from the Landlords in the amount of \$28,550.00 including reimbursement for an alleged illegal rent increase, compensation pursuant to section 51(2) of the *Residential Tenancy Act*, and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on May 23, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation representing an overpayment of rent?
2. Is the Tenant entitled to 12 months' rent pursuant to section 51(2) of the *Act*?
3. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant's son, A.G. testified on behalf of the Tenant. He confirmed that the tenancy began October 2016. Monthly rent was originally \$1,850.00 and was raised to \$2,100.00 during the tenancy.

2021 Rent Increase

A.G. testified that they lived in the rental unit for five years without any issues. On June 1, 2021 the Landlords sent the Tenant a 2 Month Notice to End Tenancy for Landlord's Use. The Tenant stated that they spoke to the Landlords and the Landlords informed the Tenant that the property was well below market rent. The Landlords asked them to pay \$2,300.00 in rent. The Tenants were worried about having to move and agreed to pay \$250.00 more. They agreed to pay \$2,100.00 not realizing that there was a form that should be issued, they were entitled to notice of any rent increases, and that at the time there was rent freeze due to the Covid 19 pandemic.

A.G. stated that they tried to get advice and called the Residential Tenancy Branch at the time and waited 2 hours. 13 months later they called again and found out that the Landlords should have issued the proper form, should have given them some time before that increase took effect and that there was a rent freeze at the time. Once they were informed of this, they made the current application wherein they sought compensation for \$3,250.00 representing the \$250.00 per month for the 13 months they paid the illegal rent increase.

2 Month Notice to End Tenancy

The Tenant received a second 2 month Notice to End Tenancy May 31, 2022. The reasons cited on the Notice were that the Landlord was intending to occupy the rental

unit. A.G. stated that the Tenant received a package on June 2, 2022 outside their door which included a Mutual Agreement to End Tenancy, a 1 Month Notice to End Tenancy for Cause (with no reasons noted) and the 2 Month Notice.

The Tenants moved out on June 30, 2022 by accepting the 2 Month Notice. They exercised their option to end the tenancy early and gave 10 day notice on June 20, 2022. The Tenant also received 1 month rent in compensation.

A.G. testified that they visited the property on multiple dates following the date they moved out. They also spoke with their neighbours. He stated that it was clear there was no one there, aside from the people on the property doing renovations and yard maintenance. He noted that they knocked on the door on numerous occasions and no one ever answered the door.

As they suspected that the rental unit was not occupied and that the Landlords intended to sell the property rather than occupy it, they looked for the property online and as early as October 19, 2022 they saw the property listed for sale by D.M. who is one of the Landlords but also a realtor. They also saw a YouTube video of the house listing which showed the house as being substantially renovated.

A.G. confirmed that to his knowledge the property did not sell. Although he does believe the property has now been rented out to third parties for \$3,600.00. He further confirmed that as of February 2023 there was a car in the driveway such that it appears as though someone moved in.

In response the Landlord, D.M., testified as follows. She confirmed that she is one of the owners of the property.

In terms of the rent increase D.M. stated that she was not aware there was a rent freeze at the time they issued they accepted the rent increase of \$250.00.

D.M. stated that it was always M.L.'s intention to occupy the rental unit. She noted that on March 1, 2021 they provided the Tenant with another 2 Month Notice to vacate. At the time, M.L. was pregnant with her second child and wished to move into the rental unit as her unit was too small.

D.M. stated that she had several conversations with D.G. regarding M.L.'s intention to move back in the property. The Landlords suggested the Tenant increase the rent to

\$2,300.00 and the Tenants then offered to pay \$2,100.00 in rent. M.L. decided to stay another year in her apartment as her baby was small. In support they provided a screenshot of a Whatsapp conversation confirming the Tenant's agreement to pay the increased rent.

The Tenant asked that the Landlord rescind the notice which the Landlords agreed to and the Tenant agreed to pay more rent.

In terms of the 2 Month Notice issued May 31, 2022, D.M. confirmed that it was again M.L. who was intending to move into the rental unit. D.M. confirmed that the Tenants exercised their right to move out early and gave 10 days notice and moved out June 30, 2022.

D.M. stated that M.L. moved in July 1, 2022.

In response to the Tenant's submission that the property was not occupied and was in fact vacant, the Landlords provided copies of a Rogers cell phone bill, an electrical bill and photos of the interior of the home. D.M. noted that they had copies of moving invoices but had not provided them in evidence.

M.L. also provided affirmed testimony. She testified that she moved into the rental unit July 1, 2022. She stated that there was a lot of conflict with her and her partner and she was worried that she might need to sell the house. At that time she asked D.M., who is also her realtor, and co-owner to list the property, to list the property. The house was listed but never sold. She stated that she continued to live there until the end of February 2023 when she moved back in with her mother because she did not have any financial support for her children. She stated that she could not sell the property because of the issues with her relationship and the plummeting real estate market.

In reply, A.G. stated as follows.

A.G. argued that the Landlords initially claimed that M.L. moved in July 1 and moved out July 27, 2022 and she moved out because of the commute (this was included in their written submissions). He noted that during the hearing she testified that she lived there for 8 months.

A.G. also pointed out that the Landlord's Rogers bill, is a mobile service bill, not a home line, and in any case it is addressed to a different location, not the rental unit.

A.G. stated that even if you look at the landlord's evidence it does not support a finding that they live there. He noted that the BC Hydro bills show 3 months of electricity where they were only charged, \$70.00, which was just over \$20.00 a month. Having lived there for 6-7 years, they paid \$150.00 in electricity a month. 5-6 kw a day is the same usage as one fridge.

A.G. further stated that the testimony that they had no choice but to list it for sale is not true as they always planned to renovate and flip the house. He noted that D.M. is not just a friend, she is a realtor. He stated that even when they were living there during the tenancy, contractors were coming to the house regularly and that during the last month that they were there, they received numerous different notices to have tradesmen, tiling companies, roofing companies, appraisers, etc. Copies of the messages from the Landlords regarding these tradespeople were provided in evidence before me.

The Tenant also argued that the house was completely renovated as shown in the real estate ads and that this was not a simple job, but extensive, which shows that they were not living there but rather renovating it for sale.

The Tenants also pointed out that during a previous hearing in October of 2022 the Landlord confirmed her address as being on A. avenue, not the rental unit, further showing she wasn't living there at that time.

M.L. asked to clarify her testimony and at that time she stated that she actually moved out at the end of January 2023, not the end of February 2023. She also stated that she was at her mothers a lot of the time due to the conflict with her partner such that the electricity usage was low. She then stated that it was summer and her electricity usage was low due to the warmer weather.

M.L. stated that she moved into the rental unit with her partner. Their relationship got tough and they separated in October. She was not sure what to do and asked her friend D.M. to try to sell the rental unit but the market had tanked. She was without any support from her partner and had no choice but to move back in with her mother.

Analysis

Section 5 of the Act provides that the Act cannot be avoided and reads as follows:

- (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Part 3 of the *Act* deals with rent increases. Section 42 provides as follows:

Timing and notice of rent increases

42 (1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a)if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
- (b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3)A notice of a rent increase must be in the approved form.

(4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Section 43 deals with the amount of a rent increase and provides as follows:

- 1) A landlord may impose a rent increase only up to the amount
 - a) calculated in accordance with the regulations
 - . . . or
 - c) agreed to by the tenant in writing.

In this case, the Landlord raised the rent \$250.00 per month. The Landlord did not issue a Notice of Rent Increase. The Landlord also raised the rent during the rent freeze imposed during the Covid-19 Pandemic. The Tenants seek reimbursement of \$3,250.00 representing the \$250.00 illegal rent increase for 13 months.

The Landlord argues that the Tenant agreed to the rent increase and in fact proposed this sum.

The evidence confirms that the Landlords issued a notice to end tenancy and then rescinded the notice once the Tenant agreed to a rent increase. The Act is clear that, even in the instance of an agreed rent increase, the notice of rent increase must be in the approved form as provided for in section 42

In this case the Landlords did not issue a notice in the approved form. Additionally, the Landlord raised the rent during the rent freeze imposed during the Covid-19 pandemic. I therefore find the Landlords increased rent contrary to section 42 of the Act, which cannot be avoided. Consequently, I find the Tenant is entitled to compensation in the amount of **\$3,250.00** representing the amount paid over the allowable amount.

The Tenant also seeks compensation pursuant to section 51(2) alleging the property was not used for the purpose stated on the 2 Month Notice. The reasons cited on the Notice were that the Landlord would be occupying the rental unit. The Tenant submits that the property was not occupied, but that it was renovated, listed for sale, and then rented to third parties. In support the Tenant's son testified that he visited the property on multiple dates and received information from neighbours confirming the property was not occupied. The Tenant also noted that the property was substantially renovated after they moved out (as evidenced by the real estate photos posted online) and it would not have been possible for it to be occupied.

The Tenant also noted that the rental property was listed for sale as early as October 19 as they observed the property on D.M.'s youtube channel. There were open houses at that time. The Tenant stated that to their knowledge the property did not sell and was re-rented as they saw it advertised for \$3,600.00 and that as early as February 2023 it appeared to be occupied.

The Landlord testified that she resided in the rental unit. She further stated that due to issues with her partner, she listed it for sale but it did not sell and eventually she re-rented it to third parties.

On balance, I find the property was not used for the stated purpose. I accept the Tenant's evidence that the rental unit was not occupied, but rather it was renovated and listed for sale. I am persuaded by the Tenant's testimony that they went by the rental unit on numerous occasions and observed that it was vacant. The photos submitted by the Landlords as to the condition of the rental when the tenancy ended, compared to the photos of the rental unit as shown in the real estate listing confirm that the rental unit was extensively renovated after the tenancy ended. I am persuaded by the photos

submitted in evidence before me that the rental unit was renovated to such an extent that it is unlikely it was occupied by the Landlord and her young children.

I also note that in the Landlords' written submissions titled "timeline" the following is included:

"[K] – can you post [rental unit street name] staged photos here"

This suggests to me that the photos of the home submitted by the Landlords depict the home as it was for "staging" purposes, not photos of the rental unit as occupied by M.L. Notably none of these photos include personal items such as clothing, art or personal photos.

It is also notable that in October of 2022 the Landlord confirmed her address for service during another arbitration before the Residential Tenancy Branch. The address she provided was not the rental unit such that I find it more likely she was residing elsewhere. Further, I agree with the Tenant that the bills submitted by the Landlords do not suggest occupation of the rental unit as the cellular telephone bill is addressed to another property and the electrical utility invoice suggests the unit was unoccupied due to extremely low electricity usage.

The evidence also confirms that the property was listed for sale as early as October 2022. While it did not sell the fact remains that it was listed for sale. I do not accept the Landlords' evidence that the decision to list the property was due to conflict in one of the Landlord's personal relationships; rather, I find it more likely that it was the Landlords' intention even before the tenancy ended to renovate and improve the property for sale. This is confirmed by the communication between the Landlords and the Tenant and the number of tradespeople who would be attending the home to do these renovations.

I find it more likely the Landlords ended this tenancy to ensure the unit was vacant and to facilitate the renovations needed to list the property for sale.

Having found the property was not used for the stated purpose I find the Tenant is entitled to monetary compensation pursuant to section 51(2).

The tenancy agreement provides that rent was \$1,850.00 per month. As I have found the rent increase to \$2,100.00 to be illegal, and have awarded the Tenant compensation

for any amount paid over \$1,850.00, I find the Tenant is entitled to the sum of **\$22,200.00** representing 12 months of rent at \$1,850.00.

I am not persuaded that extenuating circumstances exist which should relieve the Landlords of paying the Tenant compensation pursuant to section 51(2). While it is unfortunate one of the Landlord's personal relationship deteriorated shortly after the tenancy ended, I am not persuaded this is the reason the property was listed, or re-rented. Rather, I find it more likely the Landlords intended to renovate the rental unit and list the property for sale before even issuing the 2 Month Notice.

Conclusion

The Tenant's claim for compensation is granted for the following:

Compensation pursuant to section 67 for amounts paid pursuant to an illegal rent increase	\$3,250.00
Compensation pursuant to section 51(2): 12 months of rent at \$1,850.00 per month	\$22,200.00
Compensation pursuant to sections 67 and 72 for recovery of the filing fee	\$100.00
TOTAL AWARD	\$25,550.00

In furtherance of the above I grant the Tenant a Monetary Order in the amount of **\$25,550.00**. The Tenant must serve this Order on the Landlord and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

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: January 8, 2024

Residential Tenancy Branch