



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 concerning an application made by the tenant seeking monetary compensation for the landlord's failure to comply with the Residential Tenancy Act or 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.

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.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the landlord has complied with the Act and used the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property, or do extenuating circumstances exist that prevented that?

Background and Evidence

The landlord testified that the landlord took possession of the rental unit on March 1, 2023, and the tenant was paying rent to a previous owner in the amount of \$1,422.00 per month. The landlord returned a security deposit to the tenant in the amount of \$675.00.

The landlord purchased the whole building, which contained 2 legal suites and 1 illegal suite. One other tenant was there, whom the landlord met when the landlord took possession. The landlord was concerned that it was an illegal suite. The tenant stayed, but the parties agreed to terminate that tenancy. The other legal suite was vacant.

The previous owner served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property, and a copy has been provided for this hearing. It is dated December 19, 2022 and contains an effective date of vacancy of February 28, 2023. The reason for issuing it states: All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The landlord has also provided a Tenant Occupied Property – Buyers Notice to Seller For Vacant Possession, which requests the seller to give the Notice to vacate by 1:00 p.m. on February 28, 2023.

The landlord's son intended to move in. He was to come back from Montreal at the end of the semester and was going to transfer to UVIC and continue school there. Then once he got back, his course adviser said he would have to go through a process to challenge courses, each course to see if they were compatible, which would be a different process and some courses would be ineligible or not get the credit. The landlord's son decided to try to go through the process. The landlord had advertised for rent, but cancelled the posting.

A week later the landlord's son said he didn't want to go through the process, and decided to finish his degree in Montreal.

In June sometime the landlord had to re-rent. The rental unit was re-rented effective July 15, 2023, about 5 months after taking possession. A copy of that tenancy agreement has been provided for this hearing, which shows rent in the amount of \$2,500.00 per month.

The landlord received a copy of the Notice to end the tenancy after the deal closed, but the landlord didn't look at it until the landlord received paperwork from the tenant. The landlord didn't receive the new form of Notice, and the old form said compensation to a tenant would be 2 months rent.

The tenant testified that the tenant asked about the old form during a hearing last year, and since the tenant had already moved out, it was a moot point. The tenant did receive 1 month's rent as compensation.

There is a standard practice about transferring schools, and the application deadline was January 31, 2023 if the landlord's son intended to go to school in September, 2023.

SUBMISSIONS OF THE LANDLORD:

If the landlord had received the correct form of the Notice to end the tenancy, the landlord would have told his son he couldn't change his mind. The landlord never intended to do anything wrong.

SUBMISSIONS OF THE TENANT:

The tenant was told it was up to the tenant to learn what's on the Residential Tenancy Branch website, which the tenant has done.

Analysis

Where a tenant applies for monetary compensation for the landlord's failure to use a rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property, the onus is on the landlord to establish that the landlord acted in good faith. The same law applies to a purchaser of rental property who asked the landlord to give the Notice.

It is unfortunate that the incorrect form of the Notice was given to the tenant, however the law is clear:

51 (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 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

(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.

(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 applicable, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I accept that the landlord did not know about the compensation, however the tenant vacated the rental unit in accordance with the Notice to end the tenancy.

I do not accept that the landlord's son's position respecting which school to go to is an extenuating circumstance; that could have been verified prior to issuing the Notice requiring the tenant to vacate.

In the circumstances, I find that the tenant is entitled to compensation in the amount of 12 times the monthly rent, or \$17,064.00.

Since the tenant has been successful the tenant is also entitled to recover the \$100.00 filing fee from the landlord.

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$17,164.00. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

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 \$17,164.00.

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: January 31, 2024

Residential Tenancy Branch