



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 tenants seeking monetary compensation for the landlords' failure to comply with the law or act in good faith by using the rental unit for the purpose contained in a notice to end the tenancy for landlord's use of property, and to recover the filing fee from the landlords for the cost of the application.

Both named landlords and both named tenants attended the hearing and the landlords were accompanied by Legal Counsel. One of the landlords and one of the tenants gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties agreed that evidentiary material has been exchanged, however some of the landlords' evidence was not provided within the time required under the Rules of Procedure. All evidence of the parties, with the exception of the landlords' late evidence has been reviewed and the evidence I find relevant to the application is considered in this Decision.

At the commencement of the hearing, the landlords' Legal Counsel submitted that the Style of Cause should be amended; the given name of one of the landlords is incorrect. Also, the given name of the other landlord is shortened, even though it is written that way in the tenancy agreement. The tenants did not oppose the request for amendment, and the frontal page of this Decision reflects that amendment.

Issue(s) to be Decided

- Have the landlords established that the landlords have complied with the *Residential Tenancy Act* and used the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property within a reasonable time after the effective date of the Notice, and for at least 6 months duration?

Background and Evidence

The landlord testified that this fixed-term tenancy began on September 20, 2022 and reverted to a month-to-month tenancy after October 31, 2022, which ultimately ended on August 31, 2023. Rent in the amount of \$1,500.00 was payable on the 1st day of each month, and the landlords collected a pro-rated amount for the first partial month of the tenancy. There are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$750.00 which has been returned to the tenants with interest. A copy of the tenancy agreement has been provided by the landlords for this hearing. The rental unit is the top floor of a house.

On June 26, 2023 the landlords served the tenants with a Two Month Notice to End Tenancy For Landlord's Use of Property by email. A copy of a portion of the Notice has been provided by the tenants for this hearing, and it is dated June 26, 2023 and contains an effective date of vacancy of August 31, 2023. The reason for issuing it states: 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 landlord or the landlord's spouse. The tenants vacated in accordance with the Notice.

The landlord further testified that the landlords have been living in the rental unit since September, 2023 and also resided there when the house was purchased. Photographs showing personal items in the kitchen and bedroom and living room have been provided for this hearing, and some taken on September 7, 2023 were sent to the landlord's spouse to show how the landlord had set things up prior to the other spouse's arrival.

The landlords have also provided an ICBC vehicle registration document showing the rental address, retail receipts, other invoices for repairs, a hydro bill for service starting September 2, 2023 and ending on November 2, 2023, a cable bill issued on October 14,

2023, ferry receipts and numerous dated photographs. The landlords have also provided a Service Agreement for Vacation Home Management dated August 9, 2023 for the landlords' other property.

The tenant (MC) testified that the tenants lived in the rental unit for almost a year and pass the home daily. The tenant has not noticed any activity. For the first couple weeks of September, 2023 curtains are always drawn, no lights are on. Personnel at the Residential Tenancy Branch said that 1 or 2 weeks would be reasonable, but up to the 17th of September, observing daily, there was no one there. The tenant got permission from neighbours to access their property and still there were no signs of activity at the rental property, which was also confirmed by an elderly couple residing beside the rental property.

The tenant continued to watch and only observed someone there for 11% of the time in the first 60 days, considering the ferry trips provided as evidence by the landlords. Ferry tickets show someone purchased the ticket, but not who purchased them or who travelled, and it's the tenant's belief that use of the property is not consistent with what the landlords evicted for; that is not where they return to most often.

The hydro bill submitted by the landlords shows usage of 587 kwh over 60 days, but when the tenants lived there it was over 1000 kwh over 33 days. The tenants had heated with wood, and using oil would not decrease the hydro used because the motor for the oil furnace requires electricity.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

Written submissions have been provided by the landlords' Legal Counsel, who also submitted that the landlords have occupied the rental unit commencing within a reasonable time after the effective date of the Notice. The tenants did not serve both landlords individually, but it is a non-issue and there was no prejudice to continue. The landlords attended other locations to visit, but have lived in the rental unit and still live there. The landlords have provided evidence of moving in as of the 2nd day of possession and have lived there since. Neighbours and the landlords' son have provided statements. The law does not require it to be a principle residence or primary use of the rental home, and the landlords have met that standard. Residential Tenancy Policy Guideline 2A does not require constant use, and the landlords have far exceeded that.

SUBMISSIONS OF THE TENANTS:

The landlords didn't live on the property although declaring that. Also, the downstairs was sufficient for the landlords' use and there was no need to make the tenants leave in order for them to stay. Evidence is quite clear that up until the tenants made this application, the landlords' use was infrequent, but as soon as the application was filed, the frequency increased 10-fold, according to the evidence of purchasing ferry tickets that do not say who paid. The tenants' photographs were taken over a few days after the complaint was made, and the landlords do not live or reside there, but have used it as a cottage for the landlord's "personal use" as per the transcript of a conversation between the tenant (MC) and the landlord (KD). The landlord also indicated in that conversation that it was none of the tenants' business.

Analysis

Where a tenant makes an application for compensation for the landlord's failure to act in good faith, the onus is on the landlord to establish that the rental unit was used for the purpose contained in the Two Month Notice to End Tenancy For Landlord's Use of Property commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration.

In this case, the Notice is effective August 31, 2023 and the landlord testified that one of the landlords stayed there on September 1, 2023, and spent most of the days and nights there since. The landlords have also provided photographs and the landlord testified that the September 7, 2023 photographs were to show his spouse how things had been set up.

I also consider that the utilities invoices and the ICBC vehicle registration of the landlord show the landlord's address is that of the rental unit.

Legal Counsel for the landlords referred to Residential Tenancy Policy Guideline 2A – Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, which states, in part:

C. OCCUPYING THE RENTAL UNIT

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, 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.

Vacant possession

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

In this case, the landlords have not left the rental unit vacant or unused, considering the evidence. There is no requirement for a landlord to stay there 24 hours per day. There is no evidence that the landlords have attempted to re-rent, or to sell, or to renovate in order to re-rent for a higher amount.

Considering the evidence, I am satisfied that the landlords have complied with the law, have acted in good faith, and occupy the rental unit for a residential purpose. I dismiss the tenant’s application in its entirety without leave to reapply.

Conclusion

For the reasons set out above, the tenants’ application is hereby dismissed in its 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: January 18, 2024

Residential Tenancy Branch