



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 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.

Two of the named tenants and the landlord attended the hearing and each gave affirmed testimony. The landlord also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to give submissions.

Both parties have provided a lot of evidentiary material, and agree that all evidence has been exchanged, with the exception of evidence provided by the landlord later than the time permitted under the Rules of Procedure. The landlord submitted that it was sent to the tenants by mail on February 3, 2024, but the tenants submitted that the evidence has not been received.

A respondent is required to provide evidence to the applicant no less than 7 days prior to the hearing. Since the landlord has not done so, and the tenants do not have the late evidence, I decline to consider it. All other evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the rental unit was used for the purpose contained in a 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, or do extenuating circumstances exist that prevented that?

Background and Evidence

The landlord testified that this fixed-term tenancy began on January 1, 2005 and reverted to a month-to-month tenancy after December 31, 2006, which ultimately ended on May 31, 2023. Rent in the amount of \$1,600.00 was payable on the 1st day of each month, which was increased over time to \$2,277.66 per month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$800.00 which has been returned to the tenants, and no pet damage deposit was collected. The rental unit is a single family house; the landlord did not reside on the property during the tenancy. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that the landlord served the tenants with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), and a copy has been provided by the tenants for this hearing. It is dated March 25, 2023 and contains an effective date of vacancy of May 31, 2023. The reasons for issuing it state: 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; AND the father or mother of the landlord or landlord's spouse.

When the Notice was given, the landlord was moving back from the U.S.A. and the landlord's parents were going to move in as well. However, the landlord's father had surgery and other issues, and was admitted to hospital.

The landlord had renovations done, which started in June, 2023. The landlord moved into the rental unit during the first week of August, 2023 to comply with the regulations, and had read that the landlord had to stay for 6 months. The landlord had to commute to see the landlord's elderly parents, who were not doing well. This has been a bad time for the landlord.

In November the landlord tried to list the house for rent, but took down the advertisement as soon as the landlord discovered that the tenants had filed this application. A copy of the advertisement has been provided for this hearing by the tenants, which states the home is available November 1, 2023 for \$4,600.00 per month. The landlord still lives in the house at the dispute address. The landlord's mom and son have been there, but most of the time the landlord is there alone.

The landlord has also provided an email from another person, stating that whatever is being said, it's all a lie, but the person was advised to not get involved.

Also provided are photographs depicting the poor condition of the rental house, items in the kitchen and bedding on a floor, as well as copies of an internet plan for the rental address for August 11, 2023 to August 10, 2025, a natural gas bill running from August 19 to September 20, 2023 and a hydro bill dated November 22, 2023. A witness statement has also been provided, wherein 2 persons indicate that the writers visited the landlord a few times while the landlord was living at the rental home.

The landlord's first witness (SD) is the landlord's son who testified that in early September, 2023 and in January, 2024 the witness visited the landlord at the rental address. In January, 2024 the witness stayed with the landlord at the rental address for the entirety of that week.

The landlord's second witness (VR) is the landlord's sister testified that the witness visited the tenant during the month of July, 2023 for that month. The landlord was living in the home, and the witness was very comfortable living with the landlord in the rental house. Their father was in the hospital, and the witness and landlord were going back and forth between the hospital and the house.

The first tenant (DT) testified that the tenants lived in the rental unit for 18 ½ years.

Before Christmas, the landlord told the tenants that they had to leave by mid-January, which the tenant refused and said it was not allowed. However, the landlord said she could do what she wanted. Then the landlord sent the tenants a Mutual Agreement to End Tenancy and offered the tenants \$4,000.00. It was not a mutual agreement. Then the landlord said she needed to get in to renovate and the tenant told the landlord that it had to be on a 4-Month Notice to End Tenancy and that permits were required. The landlord replied that that was too hard to do. The tenant sent links to the landlord, and the landlord sent more Mutual Agreements to End Tenancy asking the tenant to sign, but the tenant refused. Copies of several email and text messages exchanged between the parties have been provided for this hearing.

Then the landlord gave the Two Month Notice to End Tenancy For Landlord's Use of Property effective May 31, 2023 because the landlord and parents were moving in. The tenants asked to meet, but the landlord declined to do the move-out inspection, and the tenant left the keys.

The landlord renovated but didn't move in at all.

The tenant further testified that the listing to rent, a copy of which has been provided for this hearing was for a 5 bedroom home, but was a 3 bedroom home when the tenants resided there. The photographs in the listing of November 1, 2023 shows no furniture, but an empty house. The landlord always talked about renovating and getting current market value, and wanted the tenants to move out to increase the rent.

The tenants have 4 kids, which was a huge cost factor for the tenants. The new rental was \$3,500.00 as well as \$3,500.00 for a security deposit and pet damage deposit that the tenants had to pay.

Witness statements and emails have also been provided for this hearing, which the tenant testified show the communication between the parties. One of the witness statements is from the mail carrier, stating that the person has been doing so at the rental address for 3 years, and since the tenants moved out, the person has never seen anyone living there, but many contractors renovating, and that the only mail is for the tenants because they have a change of address. Up to the date of January 5, 2024 all blinds are closed, no one seen coming or going from the residence.

The tenants were paying \$2,277.66 per month for rent at the time of moving out.

The second tenant (ST) testified that the tenants lived in the rental unit for a long time and made repairs as they could. The parties had an agreement that rent would not be increased if the tenants made some repairs. The landlord covered the cost of materials, and the other tenant re-built the deck, and the tenants got a benefit of half a month's rent for that, saving the landlord thousands of dollars. The landlord also asked the tenant to repair the garage door, and the tenant's husband's hand was crushed because the landlord wouldn't do it. The tenants were just tossed aside because the landlord wanted more rent, after 18 ½ years.

One of the witness statements provided by the tenants is from a person who lives in the neighbourhood of the rental home, down a few houses, and has lived there longer than the tenants.

The letter carrier has been doing that job for about 3 years. No mail of the landlord went to the rental home, only flyers. The letter carrier has nothing to gain by lying, but delivers mail and observed what she saw in the neighbourhood.

SUBMISSIONS OF THE LANDLORD:

Prior to renting, the landlord lived in the rental house for 5 years and the landlord's kids attended school there. The family had to move to the U.S., then the landlord's husband got colon cancer and passed 5 months after his diagnosis. The landlord wanted to

move back into the rental house, and started a plan back to Canada to look after the landlord's dad. The landlord had no furniture, sleeping on the floor, and furniture is in storage, referring to photographs provided for this hearing. The kitchen is equipped and the landlord is managing somehow. The landlord hired a property manager who listed the rental home for rent at \$4,600.00 per month which is market rate.

SUBMISSIONS OF THE TENANTS:

The tenants have been above-board and all evidence and testimony provided is 100% honest. The landlord admitted she has no furniture, but a visitor in July was comfortable, so perhaps she didn't mind sleeping on the floor either.

Analysis

Where a tenant applies 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, the onus is on the landlord to establish that the landlord did accomplish the stated purpose commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration. The consequences of not acting in good faith is a requirement to compensate the tenants the equivalent of 12 times the monthly rent. The law also states that where I find that extenuating circumstances exist that prevented that, I may excuse the landlord from paying the required compensation.

In this case, the effective date of the Notice is May 31, 2023 and the tenancy ended at that time. The landlord testified that the landlord moved into the rental home the first week of August, 2023. That's more than 2 months after the effective date. However, I don't find that particularly late considering that the landlord had renovations completed.

The rental home was advertised for rent effective November 1, 2023 at more than double the rent that the tenants had been paying, not 6 months. The landlord also testified that the advertisement was taken down when the landlord learned of this dispute hearing.

I have reviewed all of the unopposed evidence and consider the undisputed testimony of the tenant that the landlord attempted on more than 1 occasion for the tenants to sign a Mutual Agreement to End Tenancy and offered \$4,000.00 and later \$5,000.00 for the tenants to vacate the long-term tenancy.

I also agree with the tenants' submission that, given there is no furniture in the house, the landlord and guests must have been very comfortable sleeping on the floor.

I accept that the landlord may have stayed in the rental home from time-to-time, perhaps during renovations, while attending to her father who is in hospital. However, I am not satisfied that the landlord has complied with the *Act* or acted in good faith, and I am not satisfied that extenuating circumstances prevented the landlord from doing so.

I find that the tenants are entitled to compensation in the amount of 12 times the monthly rent, or $\$2,277.66 \times 12 = \$27,331.92$. Since the tenants have been successful with the application the tenants are also entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in favour of the tenants as against the landlord in the amount of \$27,431.92. 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 tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$27,431.92.

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: February 10, 2024

Residential Tenancy Branch