



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking monetary compensation for the landlords' 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.

The tenant and both named landlords attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. One of the landlords indicated that all evidence has been exchanged, which was not disputed by the tenant. Therefore, all evidence has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the landlords have complied with the *Act* and use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property?

Background and Evidence

The first landlord (RG) testified that this fixed-term tenancy began on November 15, 2020 and reverted to a month-to-month tenancy after November 15, 2021, which ultimately ended on June 30, 2023. Rent in the amount of \$1,300.00 was originally payable on the 1st day of each month, which was increased to \$1,350.00 effective May 1, 2023, but the landlords didn't collect the increase. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$650.00, all of which was returned to the tenant. The rental unit is the ground level suite in a house, and the landlords lived in the upper level.

The landlord further testified that around the end of April, 2023 the landlords served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), and a copy of a portion of the Notice has been provided by the tenant for this hearing. It is dated April 26, 2023 and contains an effective date of vacancy of June 30, 2023. None of the boxes have been selected on the form for the reason for ending the tenancy. It also states: "Tenant will have the month of June/2023 as free (compensation)." The reasons for the landlords to have selected are:

- 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);
- The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit;
- 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 Tenant no longer qualifies for the subsidized rental unit.

The house cost was too much with taxes, etc. and the landlords decided to downsize to an apartment. Because the laundry was shared the landlords couldn't get another tenant upstairs and the landlords were moving out. Market value was \$4,200.00 for the whole house but the tenant said she couldn't afford that and would rather leave with free rent for June. The landlords re-rented effective July 1, 2023 for \$4,200.00 for both units.

The parties mutually agreed; the tenant never said she was going to file this dispute and did not show that she was unhappy about it. The landlord was always honest, not deceptive.

The second landlord (JJ) testified that the tenant complained, so the landlords only increased rent one time for \$26.00 and told the tenant that the landlords didn't know the rules and the parties agreed to \$26.00, but the tenant never paid the increase.

Basically, the parties talked about the situation and had a verbal agreement.

The tenant testified that the landlords didn't get the increased amount.

The landlords gave the Notice to end the tenancy on April 26, 2023 and the tenant received 1 month's rent as compensation.

The landlords never helped the tenant to find a tenant for the upper unit, but made excuses about laundry and such. The tenant always tried to make a solution, and tried to stay, even asking if the tenant could stay for 1 more month.

The parties finally agreed that the tenant could rent the whole house for \$3,800.00, and the parties had a deadline. However, the day before, the landlord (RG) sent the tenant a text message changing her mind saying they wouldn't go lower than \$4,000.00, but the tenant couldn't afford that. The tenant didn't want to fight more about it so didn't dispute the Notice. The landlords told the tenant that they got an apartment and wanted to rent the whole house, which was the same day that the tenant received the Notice.

Analysis

Where a tenant applies for monetary compensation for the landlord's failure to comply with the *Act* and act in good faith in issuing the Notice, the onus is on the landlord to establish that the landlord did use the rental unit for the stated purpose commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration. Regardless of discussions or messages exchanged, it is not a mutual agreement unless the parties sign a Mutual Agreement to End Tenancy.

In this case, the landlords didn't select which of the reasons applied, and did not act in good faith by using the rental unit for any of the purposes set out in the Notice. If the tenant had disputed it, the Notice would no doubt have been cancelled. However, if a tenant does not dispute a notice to end a tenancy given by a landlord, the tenant is conclusively presumed to have accepted the end of the tenancy. The tenant didn't dispute it, and the tenant was entitled to compensation equivalent to 1 month's rent.

If a landlord fails to establish that the landlord used the rental unit for the stated purpose, the landlord must pay the tenant 12 times the monthly rent.

A landlord may only end a tenancy in accordance with the law, which does not include re-renting.

I accept that although the rent was increased by \$26.00, the landlords never collected that amount, but collected rent in the amount of \$1,300.00 per month. I find that the tenant is entitled to compensation in the amount of \$15,600.00 (12 x \$1,300.00).

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

I grant a monetary order in favour of the tenant as against the landlords in the amount of \$15,700.00. The landlords 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 landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$15,700.00.

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: February 19, 2024

Residential Tenancy Branch