



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 stated 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.

Both tenants and the landlord attended the hearing, and the landlord was assisted by an interpreter. Both tenants and the landlord each gave affirmed testimony and the interpreter was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of the interpreter's skill and ability. The parties were given the opportunity to question each other and to give submissions.

The landlord has not provided any evidence, and the landlord agrees that the tenants' evidentiary material has been received. Therefore, all evidence of the tenants 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 has the landlord established that extenuating circumstances exist that prevented that?

Background and Evidence

The landlord testified that this fixed-term tenancy began on December 5, 2020 and reverted to a month-to-month tenancy after December 31, 2022, which ultimately ended on March 5, 2023. Rent in the amount of \$2,670.00 was originally payable on the 1st day of each month, but was increased to an amount that the landlord does not recall. On November 22, 2020 the landlord collected a security deposit from the tenants in the amount of \$1,300.00 as well as a pet damage deposit in the amount of \$1,300.00. The landlord had a property manager who collected rent and does not know if either of the deposits were returned to the tenant. The rental unit is a townhouse.

The landlord further testified that the tenants were served 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 January 26, 2023 and contains an effective date of vacancy of March 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 landlord was planning to move in, and wanted to move in, however the landlord's mother was sick in January, 2023 and her condition worsened causing the landlord to change the plan and leave the Country to visit the landlord's mother. The landlord returned in April, 2023. Due to financial problems at that time the landlord decided not to move in and listed the rental home for sale.

The landlord also disagrees with the tenants' claim amount because it includes utilities (natural gas and strata fees). The landlord didn't receive the last month of rent.

The first tenant (PLC) testified that there has been no correspondence with the landlord since the tenants moved out.

The tenants have provided copies of the tenancy agreement and Notices of Rent Increase, showing that rent was originally \$2,670.00 per month, increased to \$2,709.00 effective January 1, 2022 and \$2,763.15 effective January 1, 2023.

Also provided are a BC Assessment showing that the rental home sold on May 14, 2023 for \$1,220,000.00, as well as a real estate website showing the sales listing and the sale date of May 14, 2023.

The tenants received repayment of the security deposit and pet damage deposit, except for a portion that the tenants agreed to for cleaning.

The second tenant (JR) testified that the tenants never received any update from the owner or agent while looking for a new place to live, or anything about having to change the reason for ending the tenancy.

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 landlord did use the rental unit for the purpose contained in a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration. If the landlord fails to do so, the landlord must pay compensation to the tenant equivalent to 12 times the monthly rent. The law also states that I may excuse the landlord from paying the compensation if I am satisfied that extenuating circumstances prevented the landlord from accomplishing the stated purpose.

In this case, the stated purpose was for the landlord or a close family member to occupy the rental unit.

Where a landlord serves such a Notice, the tenants are entitled to compensation in the equivalent of 1 month's rent payable under the tenancy agreement. The parties agree that the tenants did not pay rent for the final month of the tenancy, and I find that the tenants have received that compensation.

Although the landlord has not provided any evidentiary material, I accept the undisputed testimony of the landlord that her mother contracted Parkinson's Disease and lives in another Country. The landlord testified that she had to go there, returning in April, 2023, which is within a month of the effective date of the Notice, March 31, 2023.

The landlord testified that due to financial problems the landlord decided to sell. I do not find that to be an extenuating circumstance, or all landlords would be at liberty to use that reason for not paying the compensation set out in the law.

The rental home was listed for sale and sold on May 14, 2023, less than 2 months after the effective date of the Notice. I find that the tenants are entitled to compensation in the equivalent of 12 times the monthly rent of \$2,763.15, or \$33,157.80.

Since the tenants have been successful with the application the tenants are entitled to also 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 \$33,257.80. 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 \$33,257.80.

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 23, 2024

Residential Tenancy Branch