



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 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, and to recover the filing fee from the landlords for the cost of the application.

Both named landlords and the tenant attended the hearing and one of the landlords and the tenant each gave affirmed testimony. The landlords also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

At the commencement of the hearing the landlords indicated that only some of the landlords' evidentiary material was provided to the tenant, and identified that evidence. The landlord agreed that all of the tenant's evidence has been received. Since the landlords have not provided all evidence to the tenant, I declined to consider the unserved portion. All other evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the landlords have complied with the *Act* and used the rental unit 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?

Background and Evidence

The landlord (RC) testified that the landlords purchased the rental property and took possession at the beginning of August, 2023. The rental unit is a single family house.

The landlord caused the seller to issue a Two Month Notice to End Tenancy For Landlord's Use of Property, and a copy of a portion of it has been provided by the tenant for this hearing. It is dated May 17, 2023 and contains an effective date of vacancy of August 1, 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 tenant has also provided a copy of a Tenant Occupied Property – Buyers Notice to Seller For Vacant Possession.

The landlord testified that one of the new owners (GB) moved into the rental unit on August 4, 2023 and still lives there alone.

The landlords have not renovated the rental unit, but painted 1 room at a time while living there, and there is still painting to do. The landlords also fixed some leaks and installed 2 bathroom fans and replaced some flooring; laminate upstairs and tiles in the living area of the lower level floor. The City had completed an inspection on November 15, 2023, who didn't find any illegal activity in the house or anything that required a permit. Blinds and some tiles were replaced. The landlords have also provided a copy of an email from a Realtor stating that as a general impression, the rental property required substantial repairs.

Photographs provided by the landlords, including a couch in a room, which the landlord testified was there on August 4, 2023. The couch is downstairs where the gym is because the landlords were painting. Some of the photographs were taken around August 10, 2023 as well as a photograph of 1 piece of gym equipment, which was taken sometime in August, 2023. Gutter cleaning photographs were taken on October 29, 2023. The landlord lives a very simple life and only has what he needs.

The landlords have also provided a BC Driving Record Search showing the name of the landlord (GSB) with the address of the rental unit, dated August 4, 2023 as well as an Owner's Certificate of Insurance and Vehicle Licence, naming the principal driver as the landlord (GB), effective August 4, 2023 containing the address of the rental unit.

The landlord's witness (SG) testified that the landlord is a tile installer and was going to fix a tile in the witness' house. The witness asked where to drop off payment, and the

landlord gave the witness the landlord's address. The witness went there on August 5, 2023 and had tea with the landlords and dropped off a cheque. The witness worked for a taxi company and when the witness saw the lights on and the landlord's van there, the witness goes there to say hi and sometimes has tea. The witness saw a couch there, but that's all the witness has seen. The witness had a little look at the basement, then went to the deck. The witness didn't see any other part of the house except the living room and deck. Just the owner lives there.

The tenant testified that since moving out on August 1, 2023, the tenant has had no home, and was a tenant in the rental unit for about 10 years. The record also shows that the tenant was paying rent in the amount of \$1,600.00 payable on the 1st day of each month.

The purchaser did not move into the home, and is still not fully moved in. The landlord testified that the gym photograph and the master bedroom were taken on August 4, 2023, but the tenant disputes that stating that both photographs were there after full renovations were done and new flooring, not at the beginning of August. Some of the landlords' photographs were taken after November because after the renovations they could submit them for evidence in January, 2024.

The tenant lived next door for a period after the Notice was effective, and until October, 2023. It was a bad faith eviction; no one moved in and the purchasers are doing massive renovations.

The tenant has also provided a letter from a neighbour of the rental unit dated October 29, 2023, indicating that no furniture has been moved into the rental unit, and lights have been left on overnight for many nights and days at a time, and the writer has only seen a few men at the rental home working on renovations. Undated photographs have also been provided by the tenant showing no furniture in the rental home.

SUBMISSIONS OF THE LANDLORD:

The owner moved into the rental home on August 4, 2023 with multiple witnesses or statements. The owner runs a fulltime business working all over the region. The Insurance documents show the address of the rental unit and on August 4 the address of the landlord's drivers' license was changed. The landlord's wife is in India waiting for the immigration process. The gym machine photograph was not taken in August, and the landlord doesn't know the date. The photograph of the master bedroom was taken

in August. The landlords take photographs every day since receiving notice of this hearing.

SUBMISSIONS OF THE TENANT:

None

Analysis

Where a tenant makes an application 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 Notice), the onus is on the landlord to establish that good faith intent and that the landlord did occupy the rental unit as residential premises commencing within a reasonable time after the effective date in the Notice and for at least 6 months duration.

In this case, the effective date of vacancy contained in the Notice is August 1, 2023. If the landlords occupied the rental unit on or about August 3 or 4, 2023, the landlords would be required to live there until about February 3 or 4, 2024. The tenant made the application on October 29, 2023. Therefore, in order for the tenant to be successful, I would have to rule that the landlord did not occupy the rental unit commencing within a reasonable time after August 1, 2023.

I have reviewed all of the evidence of the parties, with the exception of evidence that was not provided to the tenant.

The landlord testified that the landlord who resides at the rental unit lives a simple life, which might explain the lack of furniture in the rental unit. The landlords have provided 2 photographs of a couch in a living room and 1 piece of fitness equipment and a bed. There is no evidence of dishes or cooking items of any kind. The landlord testified that photographs are taken daily since this dispute was served. A couch and a bed are not sufficient to prove occupancy. The landlord testified that the photographs in evidence were taken before August 10, 2023 and the gutter photographs on August 29, 2023. The gutter cleaning photograph provided by the landlord is dated October 19, 2023 and a photograph of a furnace filter is dated August 2, 2023 and the others are not dated. None of the tenant's photographs are dated, and were taken from the outside of the house, showing the lights on inside. The statement from the neighbour is dated October 29, 2023 which states that the lights are on all the time.

I have also reviewed the ICBC documentation, which shows the landlord's name and the name of the landlord's company both at the rental address. The landlords have also provided copies of 2 letters from customers indicating that they went to the rental address to pay the landlord for work, and the landlords' witness went in or to the deck for tea. Perhaps the witness was only there when the landlord's van was there.

There was no doubt some renovations going on. The customer letters contain information that is contrary to the neighbour's letter provided by the tenant. The landlord has also provided a letter dated January 17, 2024 from a neighbour, which says that to the best of the person's knowledge the landlord (GB) took possession of the property approximately August 4, 2023 and resides on the property. It does not say that the owner lives there definitively, and I find is little more than a guess.

To occupy means to occupy it for residential purposes. Considering the evidence, or lack thereof, I find that the landlords have demonstrated using the rental unit for business purposes, not for residential purposes.

A reasonable time to commence residential occupancy is not months after, but weeks.

In the evidence, I am not satisfied that the landlords live in the rental unit, but stay there from time-to-time while renovating. I am not satisfied that the landlords have established that the landlords have complied with the *Act* or used the rental unit 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 the tenant is entitled to compensation in the amount of \$19,200.00, being 12 x the monthly rent of \$1,600.00.

Since the tenant has been successful with the application 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 \$19,300.00. 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.

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 \$19,300.00.

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 28, 2024

Residential Tenancy Branch