



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNETC, FFT

Introduction

This hearing was convened by way of conference call on March 13, 2024, having been adjourned from February 16, 2024, concerning an amended application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; monetary compensation for the landlord's failure to comply with the *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.

On February 16, 2024 the landlord and the tenant attended the hearing, during which the parties agreed that all evidence provided by the tenant, with the exception of late evidence has been received by the landlord. The tenant submitted that no evidence had been received from the landlord. The landlord has provided proof that the material was sent to the tenant by registered mail on January 9, 2024 and returned unclaimed on February 1, 2024.

My Interim Decision was provided to the parties after the first scheduled hearing date, which ordered that the parties must serve all evidence to the other party by no later than March 5, 2024, and that both parties provide proof of that by no later than March 6 2024. The only evidence that the tenant must serve to the landlord is the tenant's late evidence. The parties agreed to the exchange of evidence by email.

On March 13, 2024 the landlord and the tenant attended and each gave affirmed testimony. The landlord 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 conclusion of the hearing the tenant applied to provide additional evidence to challenge the evidence that the landlord had provided, submitting that the tenant received the landlord's evidentiary material on March 2, 2024 and it was too late to provide the challenging evidence. The landlord did not consent or oppose the application and did not wish to adjourn the hearing. As a result, I ordered that such evidence must be provided to the landlord and uploaded to the Residential Tenancy Branch automated system by no later than March 15, 2024, along with proof of service on the landlord. The tenant uploaded the new evidence, but did not provide proof that it was served to the landlord. Therefore, I decline to consider any of the tenant's evidence uploaded on March 15, 2024.

No further issues with respect to service or delivery of documents were raised, and all other evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for storage fees and aggravated damages?
- Has the landlord established that the landlord has complied with the *Act* and used the rental unit 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 August 1, 2018 and reverted to a month-to-month tenancy after July 31, 2018, which ultimately ended on October 27, 2021. A copy of the tenancy agreement has been provided for this hearing, which indicates that rent in the amount of \$1,100.00 was payable on the 1st day of each month. However, an Addendum to the tenancy agreement states that rent is \$1,100.00 per month until December 1, 2018 and then rent will be \$1,200.00 per month. A Notice of Rent Increase has also been provided for this hearing, which increases rent to \$1,231.30 commencing February 1, 2020. There are no rental arrears.

On July 20, 2018 the landlord collected a security deposit from the tenant in the amount of \$550.00, all of which has been returned to the tenant. The rental unit is a basement suite, which is half of the bottom of the landlord's house, and the landlord resided in the upper level during the tenancy.

At the end of August, 2021 the landlord served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), and a copy has been provided for this hearing. It is dated August 29, 2021 and contains an effective date of vacancy of October 31, 2021. 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 also testified that toward the end of the tenancy, it was not good for the landlord, who was displaced from her home because the tenant's mother with dementia screamed a lot over the 3 years, to the point where the landlord had to go elsewhere to sleep. The landlord gave the Notice so the landlord could regain the entire home.

At the end of September, 2021 the landlord got notice that the tenant had applied to cancel the Notice, so alternate arrangements were made. At the end of October, 2021 a neighbour had sold her house next door and wanted to stay at the landlord's home while they looked for a new place. The neighbour stayed in the upper level of the landlord's home commencing on October 26, 2021. The landlord's pictures, lamps and some personal things were moved to the rental unit at the beginning of November, 2021, not knowing what the result of the hearing would be.

The landlord was notified by the landlord's agent by telephone that the tenant was moving out. On December 3, 2021 the landlord received an email from the Residential Tenancy Branch stating that the tenant's application was withdrawn.

The landlord spent Christmas and New Years in Alberta, and while away received a call from the neighbour who was residing in the upper level of the landlord's home stating that there had been a major, Category 3 flood; the sewer backed up in the toilet upstairs and overflowed to the basement suite bedroom and living area. It was a major catastrophe. The house was all ripped apart when the landlord returned at the end of January, 2022.

The landlord's insurance company wanted the contact information of the neighbour who lived upstairs, and they left. The upper level was not affected, and after the neighbour left, the landlord went back, monitored repairs, but couldn't stay there until the neighbour left.

It took close to the end of March, 2022 to finish the repairs. It's the landlord's family home. Nobody lives in the rental unit now, but the landlord's daughter moved in toward the end of April, 2022 and moved out a year and a half after that. The landlord doesn't need to use 2 kitchens.

The landlord's witness is the landlord's daughter who testified that the house has been the family's home for just over 12 years.

The witness has personally witnessed the relationship between the landlord and tenant progressively become more difficult. The landlord left the home prior to the tenancy ending due to the landlord's complaints of noise and unresolved issues, and the landlord made accommodations elsewhere to sleep. The landlord also recruited an agent because the relationship was increasingly hostile. The tenant was difficult to speak to and conflict resolution was not possible. The landlord could not mentally take it anymore.

The witness took the landlord to Alberta in July, 2021 because her health was declining and not improving, so the witness took the landlord to spend time with the witness' family to recuperate and regain her strength, but the landlord did not move there. The landlord arrived with a suitcase and nothing else. The landlord's belongings are in the house and have been since the house was built, except for new purchases.

Neighbours of the landlord sold their house without having already planned accommodation and had nowhere to go. They persistently asked if they could stay at the landlord's house until they found accommodation.

In January, 2022 there was major damage in the basement suite.

The tenant testified that in the spring of 2021 the landlord said she was moving to Alberta and the tenant should start looking for a place. Because of that, the tenant's mother let out a scream, and there were rare outbursts.

Prior to the Notice being issued, the landlord clearly wanted the tenant to pay extra for hydro usage, but the tenant had to use a portable air conditioning for her mother's health and wellbeing, and the landlord refused to turn it on. The landlord got mad at the tenant about it and showed the increase of hydro on August 22, 2021. On August 27, 2021 the landlord had a friend provide the tenant with a letter about the cost of hydro and a complaint of continued screaming. Then on August 30 the landlord got a person to evict the tenant and wanted the tenant to sign the second page of a document without seeing the first page. The tenant saw that it was a demand to pay utilities, and the tenant grabbed it from her. Utilities were included in the rent, and authorities said it was an attempted fraud.

The tenant disputed the Notice, and on October 26, 2021 the landlord had a friend bring another letter about leaving on the 31st of October, and scheduled an inspection for 1:00 p.m. The tenant had no intention of moving, but was putting some stuff in storage because the tenant didn't know what the result of the dispute would be; the tenant was not prepared to move. The rental unit was not empty on October 29, 2021; the tenants stayed until the night of October 30 and truckloads were taken on the 31st prior to the inspection.

The tenant has also provided a copy of real estate listings dated March 8, 2021, and December 21, 2021 and March 21, 2022 with photographs showing no furniture in the lower level of the home.

The landlord returned the tenant's security deposit but did not compensate the tenant 1 month of rent, saying they would look into it.

The tenant called the Residential Tenancy Branch on November 2, 2021 saying that the tenant had moved out, but was advised not to cancel the hearing because the tenant had also applied for monetary compensation.

The landlord did not move into the suite. All items in the landlord's photographs were in the rental unit except a heater for workers. The landlord had rented the suite for many years, and only photographs of things included in the tenancy have been provided by the landlord.

The landlord had sent an email to the tenant saying that the landlord had to pay to stay elsewhere. The landlord had no intention of occupying the rental unit, but wanted the tenants out.

The tenant also disputes that the landlord's daughter lived in the rental unit, but in the upper level in the landlord's home.

The tenant has also provided copies of Invoices for storage of the tenants' items at \$196.00 per month for the months of October, 2021 to September, 2022, which the tenant claims as against the landlord, in addition to stress caused by the landlord as in the letter dated October 26, 2021 from an agent for the landlord. A copy has been provided for this hearing which assumes that the tenant will be moving all belongings on October 27, 2021.

SUBMISSIONS OF THE LANDLORD:

The landlord gave the tenant 1 month's compensation by e-transfer, but doesn't use that bank anymore.

SUBMISSIONS OF THE TENANT:

The tenant seeks 12 times the monthly rent, plus \$3,000.00 for aggravated damages; if the tenants had not been evicted, they wouldn't have had to move with no place to go.

Analysis

There are rules under the law with respect to creating a tenancy agreement and giving notices to end the tenancy.

In this case, the Addendum to the tenancy agreement increases rent from \$1,100.00 to \$1,200.00 per month after the first 4 months (August to November, 2018), and the landlord collected an extra \$100.00 per month from December, 2018 to the end of January, 2020, which is 14 months. That calculates to **\$1,400.00** in total. Then the landlord raised the rent effective February 20, 2023 by an additional \$31.20, which I find is 2.6% based on the monthly rental of \$1,200.00, but the landlord wasn't entitled to that extra \$100.00. The Notice of Rent Increase states that is the first rent increase, which was established on August 1, 2018, at the current rent of \$1,200.00 increased by \$31.20 to \$1,231.20 effective February 1, 2020. The maximum amount that the rent could be increased effective in 2020 was 2.6%, which I find is 2.6% of \$1,200.00. That increase is not lawful, and I find that the landlord has collected an additional **\$655.20**

(February 1, 2020 to October 31, 2021 = 21 months x \$31.20 = \$655.20). Pursuant to my authority under Section 62 of the *Residential Tenancy Act*, I find that the tenant is entitled to recover the overpayment of **\$2,055.20** (\$1,400.00 + \$655.20).

With respect to the tenant's claim for monetary compensation for the landlord's failure to act in good faith and accomplish the stated purpose for ending the tenancy, considering the testimony and the evidence of the parties I find that the sequence of relevant events are as follows:

- August 29, 2021 the landlord served the Two Month Notice to End Tenancy For Landlord's Use of Property;
- October 26, 2021 the landlord's neighbour moved into the landlord's upper suite;
- October 31, 2021 the tenancy ended;
- October 31 or November 1, 2021 the landlord moved some personal items into the rental unit;
- December 8, 2021 the landlord listed the house for sale;
- December, 2021 the landlord went to Alberta;
- January 24, 2022 the category 3 flooding occurred in the rental unit;
- February 14, 2022 the neighbour moved out of the landlord's upper suite and the landlord moved back, testifying that the landlord couldn't stay there until the neighbour left;
- March, 2022 the rental unit restoration was completed;
- March, 2022 the rental unit was listed for sale again.

The *Residential Tenancy Act* states:

49 (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, the landlord testified that 1 month's rent was electronically transferred to the tenant but no longer uses that bank, which is disputed by the tenant who testified that the landlord said, "they would look into it." The onus is on the landlord to establish that the tenant was provided with that compensation. It would not, in my opinion be very difficult for the landlord to obtain that record in spite of no longer using that bank. I find that the tenant has established a claim of **\$1,100.00**.

51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement unless the landlord or purchaser, as applicable, establishes that both of the following conditions are met:

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice;

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a) (demolition), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a) (which is demolition), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

A landlord may end a tenancy for landlord's use of property if the landlord intends in good faith to use the rental unit as an extension of the landlord's home, so long as the Notice is given in good faith with no ulterior motive. In this case both parties agree that the landlord ended the tenancy because of the alleged disturbances caused by the tenant's mother, who has dementia, and because the relationship of the parties had deteriorated, and a result of increased hydro costs. That is an ulterior motive. However, if the landlord can establish that the rental unit was used as an extension of the landlord's home or that the landlord occupied the rental unit for at least 6 months, then the tenant's claim for 12 times the monthly rent cannot succeed.

The tenant's position is that the landlord did not occupy the rental unit, but left it vacant. To occupy means to inhabit or at least use it. To not use it for the landlord's purposes is the opposite of occupy. I have reviewed all of the landlord's evidence, and I find that it has not been occupied except for storage of certain items.

In this case, there is no question that the effective date of the Notice is October 31, 2021, and I find that the tenancy ended on that date. I also find that the flooding occurred on January 24, 2022 and the remediation work took close to the end of March, 2022 according to the landlord's testimony. That would constitute extenuating circumstances for that period.

Both parties have provided evidence of a Real Estate listing for the rental home dated December 21, 2021. The tenancy ended on October 31, 2021 and the flooding occurred in January, 2022. I accept that the landlord was away during Christmas and New Years, and prior to returning home the flooding had occurred. The onus is on the landlord to establish that the landlord occupied the rental unit for a period commencing reasonably after October 31, 2021 until Christmas, 2021 and again after the remediation work was done.

The landlord testified that the remediation work in the rental unit completed around the end of March, 2022. I accept that the rental home could not be sold during that time, and the landlord did not re-rent, but listing it for sale less than 2 months after the tenancy ended gives rise to the landlord's failure to comply with the law.

In the circumstances and considering the evidence, I find that the Notice was not issued in good faith, the landlord had an ulterior motive, the landlord had no intention of occupying the rental unit for 6 months, and has not proven that the landlord used the rental unit for the stated purpose.

I find that the tenant is entitled to 12 times the monthly rent of \$1,100.00, or **\$13,200.00**.

The compensation of 1 month's rent is meant to cover moving expenses, which I have already awarded at \$1,100.00, and therefore the application for storage fees is dismissed.

Similarly, the compensation referred to in the *Act* is for damages, and therefore I dismiss the tenant's application for aggravated damages.

Since the tenant has been partially 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 \$16,455.20 (\$2,055.20 + \$1,100.00 + \$13,200.00 + \$100.00 = \$16,455.20). 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 tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$16,455.20**.

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: March 18, 2024

Residential Tenancy Branch