



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 accomplish the stated purpose for ending the tenancy with a Two Month Notice to End Tenancy For Landlord's Use of Property.

The tenant and both named landlords attended the hearing, and the landlords were assisted by Legal Counsel. One of the landlords and the tenant each gave affirmed testimony and the parties, or Legal Counsel were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the landlords have accomplished the stated purpose for ending the tenancy within a reasonable time after the effective date of a Two Month Notice to End Tenancy For Landlord's Use of Property, or do extenuating circumstances exist that prevented that?

Background and Evidence

The landlord testified that this month-to-month tenancy began on July 1, 2022 and ended on July 31, 2024. Rent in the amount of \$2,900.00 was payable on the 1st day of each month, which was increased during the tenancy up to \$2,940.00 or \$2,963.00 per month. There are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$1,450.00, which has not been

returned to the tenant; the landlords have not received the tenant's forwarding address in writing. The rental unit is an upper level suite, and a basement suite was also rented during this tenancy.

Move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy, but copies have not been provided for this hearing. The landlord testified that the move-in condition inspection report was done with the tenant, and that the report was completed, not just a walk-through. A report was also done for the move-out portion, however the tenant was not present for the move-out inspection. The landlords provided the tenant with a copy of the move-in portion, but not the move-out portion.

The landlord further testified that on May 27, 2024 the landlord served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice). He testified that he served it in person to an adult person who lives at the rental unit with the tenant, then sent it by email, but did not have prior written consent from the tenant to serve legal documents in that manner. The landlord arrived at the property and the person was upstairs. Another person asked who the landlord wanted to see, and the landlord asked for the tenant, who said she didn't want to see the landlord. The landlord left the Notice with a gentleman at the door, who lives with the tenant, however the tenant has not disclosed that to the landlords. The gentleman is an adult, and the landlord asked for his name but he didn't provide it. The landlord later clarified that the person was not very cooperative when the landlord tried to give him the Notice, and he wouldn't take it, so the landlord posted it to the door of the rental unit which was witnessed by the lower level tenant, and a photograph was taken, a copy of which has not been provided for this hearing.

A copy of the Notice has been provided by the tenant for this hearing, and it is dated May 27, 2024 and contains an effective date of vacancy of July 31, 2024. 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 and the child of the landlord or landlord's spouse. The landlords did not collect rent for the last month of the tenancy.

The landlords and their son moved into the rental unit on September 1, 2024 and still reside there. The landlords moved out of their home in another City and re-rented that unit. Copies of tenancy agreements for those 2 units have been provided for this hearing. The first is for a fixed-term commencing November 1, 2024 and reverting to a month-to-month tenancy after October 31, 2025, signed by the landlord on September 26, 2024 and by a tenant on September 23, 2024. The second has the same commencement and fixed

term dates signed by the landlord on September 26, 2024 and by a tenant on September 25, 2024. Both contain the same rental address.

Also provided are copies of the driver's licenses for each of the landlords with a change of address sticker showing this rental address, and the landlord testified that the changed addresses were done in September, 2024, and the landlords' vehicle insurance shows a change of address effective October 8, 2024.

The rental unit was not listed for rent on any platform, and the landlords have provided an Invoice from an appliance company dated August 23, 2024 addressed to one of the landlords at the address of the rental unit for purchase of kitchen appliances. Also provided are a BC Hydro bill for August 8 to October 7, 2024, and a gas bill for the period of September 9 to October 8, 2024 addressed to the same landlord at the address of the rental unit.

Prior to issuing the Notice, the house was listed for sale and the landlord took it off the market in April, 2024. A copy of the cancellation has been provided, which is dated April 23, 2024 and signed by the landlord on May 31, 2024. The landlord testified that signing the document may have been late.

In August, 2024 when the landlords looked at the property it was clear that some work was required, such as replacing carpets and painting the bathrooms and the kitchen. The tenant left the property in bad shape; dirty, and meat left in containers. There was no room to walk. The landlords had to hire people to clean it up, and photographs have been provided for this hearing which the landlord testified were taken on August 2, 2024. The landlords also bought new appliances and spent significant money. It wasn't supposed to be a big repair but took longer to change the carpets in the bedrooms and painting the kitchen and bathrooms.

The tenant testified that the landlord served a guest who was at the rental unit with the Notice, and the guest did not live there. The landlord arrived early in the morning and the tenant was sleeping, and the landlord left the Notice on the door of the rental unit.

The landlords were supposed to move in immediately, but did renovations; a lot more than painting and carpet, but gutted it, working until 11:00 every night. If it was just paint and carpet, it would only take 3 days. Renovations continued for the full month of August and into September, 2024.

The rental house was listed for sale on April 23, 2024 and the landlords had 2 open houses during the tenancy. Realtors said it was a tear down and that the tenant should be

prepared to move out. The landlords received no offers for the sale, which is why they renovated to put it back on the market.

No mail has arrived for the landlords, which was told to the tenant by the downstairs tenant. The tenant has also provided photographs, and testified that the outside was also painted. The neighbours have been close friends of the tenant for 10 years, and told the tenant that there has been no noise, the landlords are not there steady, but a car comes and leaves for days. There is no soundproofing between the upper and lower level units, and the tenant has provided audio evidence of what sounds like power saws. The tenant has also provided a copy of a text message from the lower level tenants to the landlords regarding concerns of quiet enjoyment and request for compensation. It is dated August 8 and states that contractors have been working upstairs from early morning until late evening, and as told by the co-tractor it will continue for more weeks to come. The tenant testified that the landlords settled that with the tenants in the lower level by paying them \$500.00 compensation.

The tenant denies that any move-in condition inspection report was done, and no cleaning was done prior to the tenancy. Previous tenants moved out the same day that the tenant moved in. No report was done at move-out either. The tenant left some items in the garage, and carpets were atrocious at the beginning of the tenancy. The tenant didn't report maintenance issues to the landlord, however no renovations were done while the tenant resided there. The tenant agrees that a landlord would want to make it comfortable, but not with extensive renovations. The construction renovations took 2 months at least.

Rent was \$2,860.00 per month effective about 6 months before the tenant move out on July 31, 2024.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The Notice was served correctly and the landlords had good faith intent to occupy, however renovations take time. Considering the amount of work done, there is no real timeline. The landlord testified that the rental unit needed repairs and renovations. The Act requires compensation to a tenant if the landlord doesn't follow through. The landlords moved in within a reasonable time and have provided evidence of moving onto the property. A walk-through was done and photographs were taken, although none are provided for this hearing.

SUBMISSIONS OF THE TENANT:

The landlords' Driver's licenses were done while the tenant was living in the rental unit, and the insurance address was updated 2 days before the tenant was served.

Analysis

Where a tenant makes an application for compensation for the landlords' failure to act in good faith and accomplish the stated purpose for ending the tenancy within a reasonable time after the effective date of a Two Month Notice to End Tenancy For Landlord's Use of Property, the onus is on the landlord to establish that the landlords did act in good faith. If I find that the landlords have not acted in good faith, the law states that the tenant is entitled to compensation from the landlords equivalent to 12 times the monthly rent payable under the tenancy agreement.

I have reviewed all of the evidence of the parties, and note that the landlord had testified that move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy, but have not provided copies, and that is disputed by the tenant. I also accept the undisputed testimony of the tenant that the previous tenants were moving out of the rental unit as the tenant was moving in, and no move-in or move-out condition inspections were completed.

The landlord also testified that the Notice was served by handing it to an adult person who lives with the tenant, then testified that he tried to give it to the tenant but the tenant wouldn't take it so the landlord left it on the door of the rental unit. He also testified that the person he saw was not very cooperative, and that the landlord handed the Notice to an adult person who lives with the tenant, but the tenant hadn't disclosed that to the landlord. The tenant testified that the person there did not live there, and the tenant was sleeping, so the landlord left it on the door.

The landlords have provided proof of a change of address on their respective Driver's licenses and on car insurance. Not much weight can be attached to the Driver's licence changes because the changes are not dated. The insurance document change is dated October 8, 2024.

The tenant has provided a string of text messages exchanged between the parties on April 23 and April 25 regarding a realtor coordinating with the tenant for showings and open houses. The MLS cancellation is dated April 23, 2024 and signed by the landlord on May 31, 2024. I question why the landlord would correspond with the tenant about showings when the landlords cancelled the listing the same day, and signed the cancellation with the realtor more than a month later.

Considering the audio evidence provided by the tenant, I agree with the tenant that if it was just painting and replacing carpet, that much work wouldn't be required. The landlord testified that it wasn't supposed to be a big repair, but took longer, just changing carpets in the bedrooms and painting the bathrooms and the kitchen. Neither

of those repairs would require enough noise to require the lower level tenants to ask for compensation, nor would it require using power saws.

The issue isn't whether or not the landlords served the Notice in accordance with the law; that is not relevant at this point. Credibility is an issue. Considering the testimony of the tenant that the realtor told the tenant that the house was a "tear down" and the tenant should look for a new rental, and considering changes in testimony by the landlord, and the evidence provided by the parties, I am not satisfied that the landlords have acted in good faith, but renovated the rental unit, presumably on the advice of a realtor, in order to sell it. The landlord made no indications of why the landlords changed their minds about selling or moving in.

Considering the evidence and the testimony, I am not satisfied that the landlords moved into the rental unit on September 1, 2024 as the landlord testified. The tenant testified that the renovations lasted well into September, 2024, and considering the email from the lower level tenants asking for compensation due to the construction noise, I find that the landlords have renovated the rental unit in order to sell, which is not in good faith.

I find that the tenant is entitled to compensation in the amount of 12 times the monthly rent, or \$35,520.00 ($\$2,960.00 \times 12 = \$35,520.00$). I grant a monetary order in favour of the tenant in that amount. 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 \$35,520.00.

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: October 31, 2024

Residential Tenancy Branch