Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Introduction

The first hearing dealt with the landlord's application for dispute resolution, filed on July 14, 2023, under the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $3,339.00 for damage to the rental unit, under section 67 of the *Act*;
- authorization to retain the tenants' security deposit of $2,000.00 and pet damage deposit of $2,000.00, totalling $4,000.00 (collectively "deposits"), under section 38 of the *Act*; and
- authorization to recover the $100.00 filing fee paid for his application from the tenants, under section 72 of the *Act*.

The first hearing also dealt with the tenants' first application for dispute resolution, filed on July 21, 2023, under the *Act* for:

- authorization to obtain a return of the tenants' deposits of $4,000.00, under section 38 of the *Act*; and
- authorization to recover the $100.00 filing fee paid for their first application from the landlord, under section 72 of the *Act*.

The second hearing dealt with the tenants' second application for dispute resolution, filed on September 5, 2023, under the *Act* for:

- a monetary order of $48,720.00 for compensation because the tenants' tenancy ended as a result of a Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 28, 2023 and effective July 31, 2023 ("2 Month Notice"), and the landlord has not complied with the *Act* or used the rental unit for the stated purpose, under section 51 of the *Act*; and
- authorization to recover the $100.00 filing fee paid for their second application from the landlord, under section 72 of the *Act*.

The landlord, the landlord's daughter, the landlord's agent, and the two tenants, tenant HLR ("tenant") and "tenant SS" attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The first hearing on January 11, 2024, lasted approximately 63 minutes from 1:30 p.m. to 2:33 p.m. The tenants intended to call 2 witnesses, "witness JS" and "witness SB." Both witnesses left the hearing at 1:37 p.m., did not return to testify, and did not hear evidence from either party.

The second hearing on March 18, 2024, lasted approximately 85 minutes from 9:30 a.m. to 10:55 a.m. The tenants called 1 witness, witness SB. Witness SB left the hearing at 9:39 a.m., did not hear evidence from either party, returned to testify from 10:29 a.m. to 10:45 a.m. only, and left the hearing after his testimony was completed. The tenants' witness JS did not testify at either hearing and did not attend the second hearing, as the tenants did not want to call her as a witness. The landlord's agent left the hearing from 10:46 a.m. to 10:48 a.m., stating that her phone unexpectedly disconnected. I did not discuss any evidence in her absence.

At both hearings, all hearing participants confirmed their names and spelling. The landlord's agent and the tenant both provided their email addresses for me to send copies of both decisions to both parties.

At both hearings, the landlord confirmed that he owns the rental unit. He said that his agent and daughter had permission to represent him. He stated that his daughter had permission to assist him with English language translation. He identified his agent as his primary speaker.

At both hearings, both tenants identified the tenant as their primary speaker.

At the first hearing, both parties provided the rental unit address. At the second hearing, the landlord's agent provided the rental unit address.

Preliminary Issues – Recording, Hearing and Settlement Options, Amendment

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recordings of any RTB hearings by any participants. During both hearings, all hearing participants separately affirmed that they would not record both hearings.

At both hearings, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' second application to add the landlord's second surname beginning with "V," which he only provided at the second hearing, not the first hearing. I find no prejudice to either party in making this amendment.

Preliminary Issue – Adjournment of First Hearing

At the first hearing and as noted in my interim decision, I stated the following. I reviewed the below information with both parties at the second hearing and they affirmed that it was correct.

During the first hearing, I informed both parties that the maximum hearing time for this application was 60 minutes. I notified them that if the hearing did not finish within 60 minutes, it could be adjourned to a later date, based on my availability and administrative scheduling.

The first hearing did not conclude after 63 minutes and was adjourned for a continuation. I informed both parties that I was seized of this matter and the hearing would be reconvened as a conference call hearing. I notified both parties that a copy of the Adjourned Hearing Notice with the calling instructions would be included with my interim decision. At the second hearing, both parties affirmed receipt of my interim decision and the Adjourned Hearing Notice.

At outset of the first hearing, the tenants affirmed that they wanted to call 2 witnesses. At the end of the first hearing, the tenants affirmed that they only wanted to call 1 witness SB related to their second application, as their other witness JS was related to their first application and the landlord's application for damages only, which were both settled. During the first hearing, the landlord's agent affirmed that the landlord did not want to call any witnesses.

I informed both parties that the tenants would only be permitted to call 1 witness SB, only as identified on the cover page of this decision, and the landlord would not be permitted to call any witnesses, as the second hearing was only a continuation to complete the first hearing.

The tenants confirmed that they completed presenting their evidence, testimony, and submissions, regarding their second application, at the first hearing. I notified both parties that the second hearing was only to hear the tenant's second application, including reply and closing submissions from both parties, and testimony from the tenants' 1 witness SB, only as identified on the cover page of this decision.

At the first hearing, the landlord's agent estimated the landlord's reply submissions at "under 10 minutes" total, closing submissions at 5 minutes total, and cross-examination of the tenants' 1 witness SB at 5 minutes total. The tenants estimated their reply submissions at 15 minutes total, closing submissions at 10 minutes total, and direct examination of their 1 witness SB at 5 minutes total.

At the second hearing, I informed both parties that they were not required to rush through any of their submissions, evidence, or witness questions. I notified them that if they exceeded the above time estimates, which they did, they would be permitted to do so.

I informed both parties of the following information during the first hearing. Both parties were directed not to submit any further evidence, prior to the second hearing. No witnesses were permitted to testify at the second hearing, except for the tenants' 1 witness SB, only as identified on the cover page of this decision. Neither party was permitted to file any new applications after the first hearing, to be joined and heard together with the tenants' second application, at the second hearing. The tenants were not permitted to file any amendments to their second application, after the first hearing, and prior to the second hearing.

At the second hearing, both parties affirmed that they did not provide any further evidence, amendments, or applications to be joined and heard together with the tenants' second application.

At the second hearing, the landlord's agent asked if she could refer to previous RTB decisions, but she did not provide copies of same to the tenants or the RTB because it arose after the first hearing. I informed her that she could not, since the tenants did not receive the previous RTB decisions, did not have notice of same, or the opportunity to respond. I notified her that my directions were clear at the first hearing and both parties affirmed their understanding of same, and they also received my written interim decision regarding same. Further, the landlord had ample time prior to the first hearing to

provide same, as the tenants' application was filed on September 5, 2023, and the first hearing occurred on January 11, 2024, over 4 months later.

Preliminary Issues – Service of Documents, Settlement of Landlord's Application and Tenants' First Application

At the first hearing and as noted in my interim decision, in accordance with sections 89 and 90 of the *Act*, I found that the landlord was deemed served with the tenant's first application on August 1, 2023, five days after its registered mailing. The landlord's agent agreed that the landlord wanted to settle the tenant's first application, despite the landlord not receiving a copy of it.

At the first hearing, both parties were given multiple opportunities to settle and discussed settlement.

Both parties agreed to a final and binding settlement of the landlord's application and the tenants' first application at the first hearing. That settlement was recorded in my interim decision, both parties affirmed receipt of same, and a monetary order was sent to the tenants to enforce same.

Preliminary Issues – Tenants' Second Application, Hearing and Settlement Options, Service of Documents

At both hearings, both parties affirmed that they were ready to proceed, they wanted me to make a decision, and they did not want to settle the tenants' second application. Both parties were given multiple opportunities to settle at the beginning and end of the second hearing, but declined to settle.

At both hearings, I cautioned the tenants that if I dismissed their entire second application without leave to reapply, they would receive $0. The tenants both affirmed that they were prepared to accept the above consequences if that was my decision.

At both hearings, I cautioned the landlord, his agent, and his daughter that if I granted the tenants' entire application, the landlord would be required to pay the tenants $48,820.00, including the $100.00 filing fee. At both hearings, the landlord, the landlord's agent, and the landlord's daughter all affirmed that the landlord was prepared to accept the above consequences if that was my decision.

At the first hearing and as noted in my interim decision, the landlord's agent confirmed receipt of the tenants' second application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I found that the landlord was duly served with the tenants' second application.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for the landlord failing to accomplish the stated purpose on the 2 Month Notice?

Are the tenants entitled to recover the filing fee paid for their second application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and witness SB at both hearings, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my summarized findings are set out below.

Both parties agreed to the following facts at the first hearing. This tenancy began on August 1, 2020, and ended on June 30, 2023. A written tenancy agreement was signed by both parties. Monthly rent of $4,060.00 was payable on the first day of each month.

The tenant testified regarding the following facts at the first hearing. The tenants want 12 months' rent compensation of $48,720.00, plus the $100.00 filing fee. The landlord did not comply with the 2 Month Notice. Th tenants got the notice at the end of April for the landlord's child to move in at the end of July. The end of the lease was July 31, 2023. The tenants were a family of 5 with a dog, and received a surprise rent increase. It was $4,600.00 per month in rent and available June 1. They asked the landlord to stay and pay $4,600.00 per month but the landlord denied it. The tenants asked to end the tenancy earlier. They wanted to move into the other house. The landlord agreed for the tenants to leave their tenancy early by June 30. The tenants did not dispute the 2 Month Notice. They gave the landlord the "benefit of the doubt" that he was telling the truth.

The tenant stated the following facts at the first hearing. The tenants do not live far from the rental unit, and they have contact with their neighbours. There was no activity in the summer at the rental unit. They filed their application on September 5. No one has moved into the rental unit yet. The landlord did not comply with the end of tenancy. The tenants provided a witness statement from witness SB on September 9. On

October 23, the landlord's agent said the daughter could not move until September because there was too much damage. On November 17, no one had moved in as per the statement of DC. The landlord's statement from December 23 was that his daughter took residence of the end of August. This contradicts the landlord's lawyer's statement that it was September. The landlord gave pictures as evidence that the daughter moved in. The landlord "staged" 3 rooms with a little bit of furniture. The landlord's utility bills are from October. The rent went up significantly.

The landlord's agent testified regarding the following facts at the second hearing. A 2 Month Notice was given to the tenants. They were required to leave by July 31, 2023. They did not dispute the 2 Month Notice. They signed a mutual agreement to end tenancy to leave earlier by June 30, 2023, of their own free will. The mutual agreement has a clear disclaimer at the top in large bold font and it was signed. The tenants agreed to forego compensation, if they were given a notice to end tenancy. There was no urgency as per the terms of the mutual agreement. The landlord completed carpet replacement, painting, and replacing of door locks, after the tenants moved out.

The landlord's agent stated the following facts at the second hearing. The landlord supported his daughter's independence. There were damage issues between the parties. The tenants threatened legal action if their demands were not met and said they would go after the landlord for an "illegal eviction." The tenants sent a text on July 19, regarding this issue. The landlord's daughter took occupancy, and he provided pictures of her furnishings. He provided 2 invoices regarding the internet. He provided a gas invoice for the gas and use of appliances. He provided a hydro invoice from August to October 2023. All of the invoices are in his daughter's name. His daughter provided a statement about her schedule and anxiety from being watched, as per the statements of the tenants' neighbours, including the tenants' witness SB and another person.

The landlord's daughter testified regarding the following, in response to my questions at the second hearing. She moved into the rental unit on September 1 2023 ,and has been living there to the present date. She lives alone. Her brother visits her sometimes. She uses the hydro at the rental unit. The rental unit has not been rented to anyone else.

The tenants did not provide a reply to the landlord's evidence at the second hearing, even though I specifically provided them with the opportunity to do so. The tenant asked to cross-examine the landlord's daughter, which I permitted her to do, as noted below.

The landlord's daughter testified regarding the following in response to questions in cross-examination from the tenant, at the second hearing. The hydro bill from August 19, 2023, to October 23, 2023, says it was the first hydro bill and there was only usage for October 2023, but she does not know why there no usage in September 2023. The Wi-Fi bills from October 21, 2023, and November 20, 2023, say that the Wi-Fi was activated on October 20, 2023. This could be because it took a while to set up, she was at her school and used the Wi-Fi there, including at the library, and she had data on her phone. The gas bill from November 24, 2023, indicates it was for the period from October 27 to November 24, and there was no previous gas bill. This was because she was still on the landlord's bill and there was a transition.

The landlord's daughter stated the following in response to questions in cross-examination from the tenant, at the second hearing. She does not cook at home often because she has passes at her school dining hall. She used gas, hydro, and internet services in September and October 2023 at the rental unit. She was 1 person living alone in the rental unit, so she had less furniture, as per the pictures submitted by the landlord. This is her first time living away from her parents. She sleeps in 1 bedroom of the 5-bedroom house. She did not want to stay in the master bedroom with the ensuite bathroom because it has a wooden floor and is colder. She stays in the smaller bedroom, which has the blinds that she likes.

The tenant testified regarding the following in response to my questions at the second hearing. The tenants did not dispute the 2 Month Notice. They moved out because of it. They dispute that the landlord's daughter moved into the rental unit. They think that the pictures of the rental unit were "staged" by the landlord. They think that the utility usage is based on the landlord turning the lights on and off and running the appliances in the rental unit, in order to pretend that somebody was living there. The tenants witness SB will say that they only saw the landlord, not the landlord's daughter, at the rental unit. The tenants requested a mutual agreement to end tenancy early by June 30, 2023. They did this because they found another place to live, and it was hard to find a place for a family of 5 on a fixed budget.

The tenant stated the following in response to my questions at the second hearing. They received the 2 Month Notice on April 28, 2023, but they did not give a 10 day notice to leave early, as indicated on page 3 of 4 on the 2 Month Notice. They found a new house on June 1, 2023. They did not know that they could give a 10 day notice to move out early. They actually knew but forgot since they read the 2 Month Notice in April 2023. The notice says that they cannot end a fixed term and move out early, and the fixed term ended on July 31, 2023. The 2 Month Notice says that the tenants can

give a 10 day notice to move out early, only if they have a periodic month-to-month tenancy. The mutual agreement states that the tenants may forego compensation from a notice to end tenancy. It only states “may.” The tenants did not contact the RTB before they signed the mutual agreement, as it indicates at the top of the form. They signed the mutual agreement of their own free will.

Both parties agreed to the following in response to my questions at the second hearing. Their names, addresses, and signatures appear on the mutual agreement on page 1. The mutual agreement indicates that the tenancy will end by June 30, 2023. The mutual agreement was signed by both tenants on May 10, 2023 and by the landlord on May 11, 2023, all by electronic signatures.

The tenants’ witness SB stated the following in reply to questions in direct-examination from tenant SS, at the second hearing. He was the tenants’ neighbor for a full 3 years. He works in construction. He keeps his tools and lumber at home. About 2 times a day, he comes home at different times, depending on his work schedule. On the weekends, he is in and out and comes home about 5 to 6 times a day, because he has kids who do different activities. He saw a big SUV and minimal stuff at the rental unit. He never saw the landlord's daughter there. He saw the landlord a few times at the rental unit, putting the garbage out in the morning and collecting in the evening. The rental unit is always dark at night.

The tenants’ witness SB stated the following in reply to questions in cross-examination from the landlord’s agent, at the second hearing. His kids and the tenants’ kids are the same age. He does not go out with the tenants. He chats in the garage and the driveway with the tenants. He did go for coffee with the tenants several times. He was told by the tenants in the driveway, that they were evicted from the rental unit. They said they were asked to move out and had to look for a place. He does not remember if the tenants told him that the landlord’s daughter was moving in. He was told that the landlord owner was moving in. There is 20 feet between his driveway and the tenants’ driveway. He could just see the front of the rental unit, not the back of the property. Therefore, he cannot see any lights in the back of the rental unit. He thinks the rental unit was empty, based on the lights being off in the rental unit. He drives and walks in and out of his property, so he only sees the rental unit during those times. It is possible that the landlord’s daughter has been coming in and out of the rental unit. He does not watch the rental unit the whole time. He does not think that his personal relations with the tenants is why he is saying that the landlord's daughter does not live at the rental unit.

The landlord's agent stated the following in closing submissions at the second hearing. Residential Tenancy Policy Guideline 2A states that the rental unit should be living accommodation or part of the occupant's living space. There is no need for 24-hour presence on the property. The rental unit has not been vacant or unused. There has been no re-rental, selling, or renovating of the rental unit. Everything has been done by the landlord in accordance with the guidelines. The tenants signed the mutual agreement in May, just before they threatened to go after the landlord for an illegal eviction because there was no compromise. The landlord wants the tenants' application to be dismissed.

The tenants affirmed that they did not want to provide any closing submissions at the second hearing, even though I provided them with the specific opportunity to do so.

Analysis

At the second hearing, the landlord's agent requested an administrative penalty against the tenants, pursuant to section 92 of the *Act*. I informed her that she could contact the RTB and request same, through the proper process. I informed her that this hearing was not an appropriate forum to do so, as I am unable to issue administrative penalties against parties.

Credibility

I find that the landlord's daughter and agent were more credible witnesses, as compared to the tenant and witness SB.

I find that the landlord's daughter and agent provided their testimony in a calm, candid, convincing, and consistent manner. Their testimony did not change based on the questions asked. They did not argue with or interrupt the tenants, the tenants' witness SB, or me. They answered questions from the tenants and me, in a direct and forthright manner.

Conversely, I find that the tenant provided her testimony in an inconsistent and confusing manner. She argued with, interrupted, and spoke at the same time as me and the landlord's daughter. Her testimony changed based on the questions asked.

I found that the testimony of the tenants' witness SB was provided in an inconsistent and confusing manner. His testimony changed based on the questions asked. When I asked at the outset of his testimony, whether he had personal relations with the tenants,

he said that he did not and he was just their neighbour. When asked the same question by the landlord's agent, under cross-examination, he changed his answer from neighbour, to talking to the tenants in the garage and driveway, to not going out with the tenants, to going out for coffee with the tenants several times. I find that his testimony may have been influenced by his personal relations with the tenants.

Mutual Agreement to End Tenancy

The tenants stated that their fixed term tenancy was supposed to end on July 31, 2023. They claimed that they requested a mutual agreement because they wanted to end their tenancy early by June 30, 2023, since they found another place earlier.

Section 44(1)(c) of the *Act* states the following with respect to ending a tenancy:

> *44 (1) A tenancy ends only if one or more of the following applies:*
> *(c) the landlord and tenant agree in writing to end the tenancy.*

Both parties agreed that they signed a mutual agreement to end this tenancy on June 30, 2023. A copy of the mutual agreement was provided for this hearing. It is on an approved RTB form. The tenants were required to vacate by the above date and did so.

I find that the tenants agreed that they voluntarily signed the mutual agreement, and they were not forced or under duress. They agreed that they could have called the RTB before signing the agreement, using the contact information provided on the mutual agreement, to ask questions, as specifically stated on the form itself. They agreed that they called the RTB regarding other issues from their tenancy, but not the mutual agreement. They agreed that they read the form before signing it and were aware of its contents.

The parties' mutual agreement states the following at the top of the form in large black font (which was read aloud by the tenant during the second hearing, my emphasis added):

> *Mutual Agreement to End a Tenancy*
> *#RTB-8*
>
> *NOTE: This form is NOT a Notice to End Tenancy.* ***Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further***

> ***obligation between landlord(s) or tenant(s).*** *If you are the tenant,* ***this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. If you have questions about tenant or landlord rights and responsibilities*** *under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act,* ***contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.***

The mutual agreement states the following at the bottom of the form under the landlord's and tenant's signature lines (which was read aloud by me during the second hearing, my emphasis added):

> ***The parties recognize that the tenancy agreement between them will legally terminate and come to and end at the date and time stated above****. It is also* ***understood and agreed that this agreement is in accordance with the Residential Tenancy Act*** *and the Manufactured Home Park Tenancy Act which states:* ***"The landlord and tenant agree in writing to end the tenancy."***
>
> ***FOR MORE INFORMATION:***
> ***www.gov.bc.ca/landlordtenant***
> ***Phone: 1-800-665-8779 (toll-free) Greater Vancouver: 604-660-1020 Victoria: 250-387-1602***

While I note that the tenants signed the above mutual agreement on May 10, 2023, I find that the tenants received the 2 Month Notice first, which was issued on April 28, 2023. Therefore, I have decided the tenants' second application, based on the 2 Month Notice and section 51 of the *Act*, as noted below, not the mutual agreement.

Rules and Burden of Proof

At the first hearing, I informed the tenants that, as the applicants, they had the burden of proof, on a balance of probabilities, to present their application and evidence, and to prove their monetary claims. They affirmed their understanding of same.

At the first hearing, I notified the landlord, the landlord's agent, and the landlord's daughter that the landlord has the burden of proof, on a balance of probabilities, to prove that he used the rental unit for the reason indicated on the 2 Month Notice. They affirmed their understanding of same.

The tenants were provided with an application package from the RTB, including a four-page document entitled “Notice of Dispute Resolution Proceeding,” dated September 8, 2023 (“NODRP”), after filing their second application.

The NODRP contains the phone number and access code to call into the first hearing, and states the following at the top of page 2, in part (my emphasis added):

> ***The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.***
>
> - ***It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.***
> - ***Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.***
> - *Parties (or agents) must participate in the hearing at the date and time assigned.*
> - *The hearing will continue even if one participant or a representative does not attend.*
> - *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The following RTB *Rules* state, in part:

> *7.4 Evidence must be presented*
>
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
>
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*

> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

I find that the tenants did not sufficiently present or prove their application and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during 2 hearings, as per Rules 7.17 and 7.18 of the RTB *Rules.*

The tenants failed to sufficiently review and explain their claims, documents, and evidence submitted in support of their application. They mentioned submitting evidence but did not review it in sufficient detail. I was required to ask them many questions about their application because they failed to provide it.

Both hearings lasted 148 minutes total, which is 2 hours and 28 minutes, and longer than the 60-minute maximum time for each hearing. The tenants had ample time and multiple opportunities to present their application and respond to the landlord's evidence. Both tenants attended both hearings and brought witness SB to testify on their behalf.

The tenants had ample time to provide sufficient evidence and adequately prepare for both hearings. They filed their application on September 5, 2023, the first hearing occurred on January 11, 2024, and the second hearing occurred on March 18, 2024. Therefore, they had almost 6.5 months to prepare.

Are the tenants entitled to a monetary order for compensation for the landlord failing to accomplish the stated purpose on the 2 Month Notice?

On the online RTB dispute access site, the tenants stated the following, regarding their application (landlord's name redacted for confidentiality):

> *[Landlord] served us a two month notice to end tenancy with the reason being the child of the landlord will occupy the unit. As of today, September 5, 2023, no one has moved into the unit. We are in contact with a neighbor of the unit and will provide a written statement as evidence.*

Copies of the 2 Month Notice were provided by both parties. The tenants did not sufficiently review or explain the notice, including the dates or parties' information, until I specifically asked them questions about it at the second hearing.

At the second hearing, both parties agreed that the 2 Month Notice states both parties' names, addresses, phone numbers, and the landlord's agent's name and signature on page 1 of the notice. Both parties agreed that the notice is dated April 28, 2023, and effective on July 31, 2023. Both parties agreed that the reason indicated on the 2 Month Notice is:

- *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).*
- *Please indicate which family member will occupy the unit.*
    - *The child of the landlord or landlord's spouse.*

The tenants did not indicate what provisions of the *Act* they were applying under. Rather than presenting and explaining their application and evidence, they focussed their testimony on the landlord's evidence. They provided irrelevant information from their tenancy, including issues related to good faith, when they agreed they did not dispute the 2 Month Notice at the RTB.

The tenants applied for 12 months' rent compensation of $4,060.00 per month, totalling $48,720.00, because the claim that the landlord did not use the rental unit for the purpose stated on the 2 Month Notice.

Section 49(3) of the *Act* states the following:

> *(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.*

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to 12 times the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

> *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 if*

> *(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
> *(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

It is undisputed that the tenants vacated the rental unit on June 30, 2023, pursuant to the 2 Month Notice. It is undisputed that the landlord issued the 2 Month Notice to the tenants for the landlord's child to occupy the rental unit. It is undisputed that the landlord's daughter qualifies as a child and close family member, who is entitled to occupy the rental unit, pursuant to the 2 Month Notice.

Section 51(3) of the *Act* states the following:

> *(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 the case may be, from*
>
> > *(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*
> > *(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

I am required to consider the above section 51(3) of the *Act*, regarding extenuating circumstances, regardless of whether it is raised by any party. However, I find that the above section is not relevant to my decision, since I find that the landlord's child occupied the rental unit, as noted below.

I accept the affirmed testimony of the landlord, his agent, and his daughter, and the landlord's documentary evidence submitted. The tenants did not dispute the authenticity of the landlord's documentary evidence. I accept the landlord's internet, hydro, and gas bills, which are in his daughter's name and the rental unit address, showing usage at the rental unit. I accept the landlord's photographs of the rental unit, showing furnishings of the landlord's daughter, while occupying it.

I accept the 2 written statements from the landlord and his daughter, that the landlord's daughter occupied the rental unit. The tenants had an opportunity to cross examine the landlord, his daughter, and his agent at both hearings, regarding their written and verbal statements, and the landlord's other documentary evidence. The tenants cross-examined the landlord's daughter at the second hearing.

I find that the landlord's daughter occupied the rental unit from September 1, 2023 to the present date of the second hearing on March 18, 2024, which I find is more than a 6-month time period. I find that the landlord's daughter occupied the rental unit within a reasonable period of time after the tenants vacated on June 30, 2023, one month earlier than the effective date of the 2 Month Notice of July 31, 2022. I find that the landlord's daughter occupied the rental unit in September 2023, which I find is a reasonable period of time after repairs were completed in the rental unit by the landlord first.

I accept the invoices, receipts, and estimates of the repairs that the landlord completed after the tenants moved out, to prepare the rental unit for his daughter to occupy. Both parties disputed the damages at the rental unit and filed applications regarding damages and the return of the deposits, which they settled at the first hearing on January 11, 2024.

I find that the tenants provided insufficient documentary, testimonial, and witness evidence to dispute the landlord's evidence or to dispute that the landlord's daughter occupied the rental unit after the tenants vacated.

The tenants claimed that the landlord's daughter did not move in because they thought the landlord went to the rental unit to turn the lights on an off and run some appliances, to generate utility bills. They said that the landlord "staged" the rental unit with furnishings, to make it look like someone was living there. I do not find that the above explanations are reasonable or probable. I find that it is reasonable to have limited furnishings for one person living at the rental unit alone, as per the landlord's daughter's testimony. I do not find that minimal internet, gas, or hydro usage to show that the landlord is turning the lights on and off and running appliances to fraudulently create utility and internet bills. I accept the landlord's daughter's testimony and written statement, that she does not cook often, she eats at the school dining hall, she is not home often because she attends school and works, she has data on her phone, and she uses Wi-Fi at school.

The tenants claimed that the landlord's daughter did not move in because their witness SB did not see her there. However, witness SB said that he could not see the back of

the rental unit, he was not watching the rental unit all the time, and he was not home all the time, particularly on weekends when he was busy and out with his children, and on weekdays when he was working, as he only returned for limited times. He said it was possible that the landlord's daughter was coming in and out of the rental unit. His testimony was based on him seeing a limited view of the front of the rental unit, not seeing lights on, and only seeing the landlord doing the garbage.

I do not find an absence of lighting at the rental unit to indicate that no one is occupying it. I do not find the rental unit being dark at night to indicate that no one is occupying it, since people usually turn their lights off while sleeping at night. I do not find that witness SB not seeing the landlord's daughter to indicate that she did not occupy the rental unit. I do not find that the landlord's daughter is required to maintain a 24 hours a day, 7 days a week occupancy at the rental unit.

I find that the landlord's daughter occupies the rental unit for a residential purpose, and it was not vacant or unused, as per the definitions in Residential Tenancy Policy Guideline 2A, which was raised by the landlord's agent at the second hearing and not responded to by the tenants, even though I specifically provided them with the opportunity to reply. I also find that the landlord did not re-rent, renovate, demolish, sell, or rent out a separate portion of the rental unit, which is contrary to section 51 of the *Act* and the 2 Month Notice.

The tenants claimed that their other neighbour DC, wrote a statement that they provided for this hearing. However, the tenants did not produce him as a witness to undergo cross-examination by the landlord, or to verify his statement, to prove its authenticity and contents.

On a balance of probabilities and for the reasons stated above, I find that the landlord met his burden of proof and used the rental unit for the purpose stated in the 2 Month Notice, pursuant to section 51 of the *Act*. I find that the landlord took steps within a reasonable period after the tenants vacated and the effective date of the notice, for the landlord's daughter to occupy the rental unit, and she continues to occupy the rental unit to the present date of this hearing in March 2024, for over a 6-month period, since September 2023.

Accordingly, I find that the tenants are not entitled to 12 times the monthly rent of $4,060.00, totalling $48,720.00, from the landlord, as per section 51 of the *Act* and the 2 Month Notice. Therefore, this claim is dismissed without leave to reapply.

Are the tenants entitled to recover the filing fee paid for their second application from the landlord?

As the tenants were unsuccessful in their second application, I find that they are not entitled to recover the $100.00 filing fee, from the landlord. This claim is also dismissed without leave to reapply.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 19, 2024

Residential Tenancy Branch