



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC

Introduction

This teleconference hearing convened as a result of a Tenant's Application for Dispute Resolution filed April 18, 2017 wherein the Tenant sought monetary compensation from the Landlord in the amount of \$1,400.00 representing two months' rent pursuant to section 51(2) of the *Residential Tenancy Act*.

The hearing was conducted by teleconference on September 12, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to monetary compensation pursuant to section 51(2) of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified that he moved into the rental unit 21 years ago. He confirmed that he moved out May 1, 2015.

Introduced in evidence was a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property issued March 29, 2015 (the "Notice"). The reasons cited on the Notice were that the Landlord, or the Landlord's spouse or a close family member (father, mother, or child) of the Landlord or the Landlord's spouse would be occupying the rental unit.

The Tenant's daughter testified that they had a previous hearing but her father was ill and did not attend. A review of the branch records confirms that a hearing occurred on February 2, 2017 and as neither party attended the application was dismissed with leave to reapply.

The Tenant's daughter testified that despite the passage of time the rental unit remains unoccupied. She stated that the rental unit is one unit in a duplex and neither side is occupied. She confirmed that during the first six months after the tenancy ended she attended the rental unit and the lawn wasn't mowed, and the mailbox was overflowing with mail.

The Tenant's daughter further stated that initially the Landlord wanted to raise the rent by \$200.00; she claimed that she spoke to the Landlord and told him that it was not reasonable to raise the rent by this amount as her father was a pensioner and could not afford it. She claims the Landlord then stated that he could renovate and get a lot more in rent for the property and that he had spoken to his brother, who was a lawyer, who said that the first thing they needed to do was "get the tenant out". She further testified that she told the Landlord that they were not allowed to do that, following which her father received the Notice.

The Tenant's daughter confirmed that it was the Tenant's position that the Landlord had no intentions of occupying the rental unit and that it was always their intention to renovate and re-rent the unit or sell it.

The Tenant stated that the Tenant on the other side, R.C., also applied for dispute resolution and was awarded two month's compensation for the same reason. She did not provide a copy of the Decision relating to R.C.'s claim.

In response to the Tenant's claim, the Landlord testified as follows.

He confirmed that the tenancy ended early May 2015. He stated that at the time the tenancy ended the monthly rent was \$700.00.

He also confirmed that his father passed away November 2014.

He testified that after they gained possession of the rental unit, his sister used the rental unit as an office for her "film business". He initially stated that they renovated and cleaned the rental property and made it appropriate for her use. He then stated that the renovations were not actually completed, rather they got a list of the renovations to be made to make the property usable for his sister. He stated this was an old home and the renovations were more complicated than they anticipated due to issues relating to the age of the home. He stated that they then received notice from the Canada Revenue Agency that their father owed over \$300,000.00 in unpaid taxes and they were not able to put more money into the property to renovate it as intended.

The Landlord stated that a neighbour could verify that the property was occupied, maintained and used by the Landlord's sister. He confirmed he did not have anything in writing from this neighbour and that he was "unavailable today". The Landlord stated that in any case, he did not at any time rent the property to another person.

The Landlord confirmed that the property in which the rental unit was located was listed for sale at the end of 2016 and was sold in July of 2017. He testified that it was not their intention to sell the property, but when it became financially impossible to renovate the property as intended they decided to sell.

He confirmed that the other renter, R.C., received two month's compensation pursuant to section 51(2) of the *Act*, but that they were disputing this award in the B.C. Small Claims Court. Again, neither party provided a copy of that Decision to me.

R.S. stated that in no way did he speak to the Tenant's daughter about his brother, who is in fact a lawyer, nor did he tell the Tenant's daughter that his brother tell him to evict the Tenant.

Analysis

The Tenant seeks compensation pursuant to section 51(2) of the *Residential Tenancy Act*, which provides for monetary compensation in the event a tenant receives a 2 Month Notice to end Tenancy for Landlord's Use pursuant to section 49. For ease of reference I reproduce those sections as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(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.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;

- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - (c) convert the residential property to strata lots under the *Strata Property Act*;
 - (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
 - (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
 - (f) convert the rental unit to a non-residential use.
- (7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.
- (9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

Tenant's compensation: section 49 notice

- 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.
- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
- (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
- (2) In addition to the amount payable under subsection (1), if
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
- the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The Tenant bears the burden of proving his claim on a balance of probabilities. Neither party submitted any evidence in support of their position, save and except for the copy of the Notice provided by the Tenant.

The Tenant alleges the Landlord, or the Landlord's close family members, did not occupy the rental unit as indicated on the Notice as the rental unit remains vacant.

The Landlord submits that he and his sister occupied the rental unit, despite not physically residing in the unit, as they took steps to renovate the unit for use as an office and meeting room for his sister's film business. The Landlord further submits that due to unforeseen financial issues relating to their late father's estate, renovation of the rental unit became impossible and the unit was listed for sale at the end of 2016 more than a year after the issuance of the Notice.

After consideration of the testimony of the parties I find as follows.

I accept the Landlord's testimony that he and his sister intended to renovate the rental unit for use as an office and meeting room for his sister's film business. I further accept his testimony that due to the unforeseen and significant tax debt left by their father, the renovations were not completed and the rental unit remained vacant until the property was sold in July of 2017, more than two years after the end of the tenancy.

Blacks Law Dictionary defines occupancy as follows:

1. The act, state, or condition of holding, possession, or residing in on something; actual possession, residence or tenancy, esp. of a dwelling or land.
2. The act of taking possession of something that has no owner (such as abandoned property) so as to acquire legal ownership. See ADVERSE POSSESSION.
3. The period or term during which one owns, rents, or otherwise occupies property.
4. The state or condition of being occupied.
5. The use to which property is put.

There is no dispute that the Landlord's sister is a close family member as contemplated by section 49 of the *Act*.

I find that the Landlord, in taking possession of the rental unit, taking steps to renovate the unit for use by his sister, and holding the property to the exclusion of others, *occupied* the rental unit as contemplated by section 49(3) of the *Act*.

The Tenant failed to adduce any evidence to show that the rental unit was rented to, or occupied by, another person who does not meet the strict definition of close family member.

I further find that the Landlord took steps to accomplish the stated purpose of ending the tenancy, namely to have the Landlord's sister occupy the rental unit. I accept the Landlord's evidence that in late 2016 the decision was made to sell the property. I accept the Landlord's evidence that this decision was made after the extent of his father's tax debt became known. I therefore find that the rental unit was used for the stated purpose for at least six months after the effective date of the Notice.

For these reasons I dismiss the Tenant's claim for compensation.

Both parties agreed that the other renter, R.C., received compensation pursuant to section 51(2) of the *Act*. As noted, neither party submitted a copy of the Decision in evidence. In any case, I confirm that my decision was made on the testimony and evidence before me in the within action and the merits of this case. As section 64(2) of the *Act* provides, I am not bound to follow decisions of other arbitrators.

- 64** (2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Conclusion

The Tenant's monetary claim is dismissed.

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: September 12, 2017

Residential Tenancy Branch