



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on August 7, 2018 whereby the Tenant sought compensation pursuant to section 51(2) of the *Residential Tenancy Act* as well as recovery of the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on September 24, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Preliminary Matter

The Tenant sought monetary compensation pursuant to section 51(2) of the *Act*. Such compensation is only available in the event the Tenant receives a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act*. For clarity, I reproduce those two 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

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,
 - (ii) 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
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
- (b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 4 months after the date the tenant receives the notice,
 - (ii) 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
 - (iii) 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*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
- (8) A tenant may dispute
- (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
 - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 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) 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.

(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.

[emphasis added in ***bold italics***]

The parties confirmed the Landlords did not issue a 2 Month Notice to End Tenancy for Landlord's Use in the approved form. The evidence indicates the Tenant moved out without receiving a formal notice to end tenancy from the Landlords. As such the tenancy ended in accordance with section 44(1)(d) of the *Act* when the Tenant vacated the rental unit.

A tenancy may only end in accordance with the *Act*. Section 44 sets out the circumstances whereby a tenancy may end. Section 52 of the *Act* sets out the form and content of a notice to end tenancy and further provides that a Landlord must use the *approved form* when ending a tenancy. In the case of a 2 Month Notice for Landlord's Use pursuant to section 49, the approved form is #RT – 32 which can be found at:

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb32.pdf>

This form sets out the reasons for ending the tenancy (the “stated purpose”) as well as providing the Tenant with information as to how to dispute the Notice. Only when the reasons for ending the tenancy are properly articulated on #RTB – 32, can an Arbitrator find that the Landlord did not use the property for the “stated purpose” as set out in section 51(2).

Conclusion

The Tenant did not receive a formal 2 Month Notice to End Tenancy for Landlord’s Use pursuant to section 49 of the *Residential Tenancy Act* and is therefore not entitled to compensation pursuant to section 51(2) of the *Act*.

The Tenant’s Application 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 24, 2018

Residential Tenancy Branch