



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MVDC INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on February 24, 2018 in which the Tenants requested monetary compensation from the Landlord pursuant to section 51(2) of the *Residential Tenancy Act* (the "Act") and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on September 20, 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.

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 *Residential Tenancy Branch 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.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord pursuant to section 51(2) of the *Act*?
2. Should the Tenants recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the 2 Month Notice to End Tenancy issued on July 31, 2017 (the "Notice"). The Tenant, W.M., testified that they accepted the Notice and moved from the rental unit during the third week in September.

The reasons cited on the Notice were as follows:

"The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant."

The Tenants allege the Landlord did not use the rental unit for the purpose stated on the Notice, as rather than demolish or substantially renovate the rental unit in such a manner that required vacant possession, the Landlord did minor renovations and then listed the property for sale. The Tenant, W.M., submitted that as the work done by the Landlord did not require vacant possession the tenancy did not need to end.

The Tenant confirmed that the Landlord did some renovations to the property but ultimately issued the Notice simply to sell it. He confirmed that the property was sold on December 14, 2017. Introduced in evidence was a copy of the B.C. Assessment for the property confirming the property sold on December 14, 2017.

The Tenant testified that to his knowledge the only renovations that were done were the following: the carpet was replaced; the laminate flooring was replaced; the unit was painted; and, the Landlord replaced the refrigerator.

The Tenants submitted copies of text communication with the Landlord's representative, J.C., in May of 2017 wherein the Tenants ask if they could remain in the rental unit if a new owner was prepared to continue the tenancy. W.M. stated that the response from J.C. was that "their eviction wasn't necessary, but the sale was". In any event of these communications the Tenants were issued a notice to end tenancy.

W.M. stated that conversations began approximately three months prior to the end of the tenancy. He stated that he was not informed that the property would be renovated until they received the Notice.

W.M. submitted that it is the Tenants' position that preparing a property for sale is not an allowable reason for eviction.

In response to the Tenants' submissions the Landlord's representative, J.C., testified as follows.

J.C. stated that she initially gave the Tenants notice of wishing to end the tenancy pursuant to the end of their fixed term. The Tenants were then given notice to end the tenancy for renovations. J.C. was not able to testify as to the extent of the renovations done after the tenancy ended.

In terms of the renovations to the property, the owner, W.Z. testified as follows. He described the renovations as "the entire house being gutted"; when asked to expand he confirmed this included removing and replacing the flooring, replacing the refrigerator and painting the walls and trim. He submitted in evidence receipts totalling \$9,907.83 for these renovations.

W.Z. stated that the renovations began approximately three weeks after the property was vacated. W.Z. also confirmed that the rental property was listed for sale within two months of the Tenants vacating the rental unit and sold on December 14, 2017.

Analysis

The Tenants seek compensation pursuant to sections 49(2) and 51 which (at the time the Notice was issued) read 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.

After consideration of the testimony, evidence and submissions of the parties, and on a balance of probabilities, I find as follows.

I find that Landlord did not use the rental unit for the stated purpose on the Notice. Rather than demolish or substantially renovate the rental unit in a manner which required vacant possession (as was the stated purpose) I find the Landlord made cosmetic upgrades to the rental unit and listed it for sale. Although the amounts spent by the Landlord are not inconsequential, they do not support a finding that extensive renovations were undertaken.

The Tenants correctly submitted that a landlord may not end a tenancy simply to sell a rental unit. The sale of a tenanted rental property includes assumption of the tenancy. While sellers may assume that a property's value is increased if it is vacant, a tenancy cannot be ended simply to facilitate a higher priced sale.

A tenancy may only be ended in accordance with the *Residential Tenancy Act*. In this case the Landlord issued the Notice pursuant to section 49(6)(b) claiming that the rental unit would be *renovated or repaired in a manner that requires the rental unit to be vacant*. Although a tradesperson replacing flooring, appliances and painting may prefer to have a rental unit vacant to accomplish these tasks, the *Act* mandates that a tenancy ended for this reason must only be done when vacant possession is *required* not *preferred*.

In a recent Decision of the B.C. Supreme Court, Mr. Justice Williamson, in *Berry and Kloet v. B.C. (R.T.A., Arbitrator)*, found as follows:

[21]...First, the renovations by their nature must be so extensive as to require that the unit be vacant in order for them to be carried out. In this sense, I use "vacant" to mean "empty". Thus, the arbitrator must determine whether "as a practical matter" the unit needs to be empty for the renovations to take place. In some cases the renovations might be more easily or economically undertaken if the unit were empty, but they will not

require, as a practical matter, that the unit be empty. The burden is on the Landlord to establish that vacant possession is required...

[22] Second, it must be the case that the only manner in which to achieve the necessary vacancy, or emptiness, is by terminating the tenancy. I say this based on the purpose of s. 49(6). The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able [to] carry out renovations. Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6).

I find that the extent of the work done to the rental unit did not require vacant possession as claimed on the Notice. Rather, I find that the Landlord made improvements to the property and ended the tenancy simply to facilitate its sale. As such, I find that steps were not taken to accomplish the stated purpose for ending the tenancy and **I therefore find the Tenants are entitled to double the monthly rent pursuant to section 51(2) of the Act.**

Having been successful in their application the Tenants are also entitled to recover the filing fee.

Conclusion

The Tenants are awarded **\$3,560.00** in monetary compensation pursuant to sections 51, 67 and 72 of the *Act*. In furtherance of this Decision, I grant the Tenant a Monetary Order in this amount and must serve a copy of the Order on the Landlord. Should the Landlord not pay as Ordered the Tenants may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

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 3, 2018

Residential Tenancy Branch