Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

At the heart of this dispute is the question of what constitutes "extenuating circumstances" for the purposes of section 51 of the *Residential Tenancy Act* (the "Act") as it applies to the tenant's claim.

The tenant filed his application for dispute resolution on January 3, 2019 and seeks compensation pursuant to sections 51, 67, and 72 of the Act. A dispute resolution hearing was held before me on April 26, 2019. The tenant, the landlord, the landlord's wife, and the landlord's legal counsel attended the hearing. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Neither party raised any issue with respect to the service of evidence that may have affected its admissibility under the *Rules of Procedure* or the Act.

I have reviewed evidence submitted that met the requirements of the *Rules of Procedure*, and to which I was referred, but only evidence relevant to the issues of this application are considered or cited in my decision.

Issues

1. Whether the tenant is entitled to compensation under section 51 of the Act.

2. Whether the tenant is entitled to compensation under section 72 of the Act.

Background and Evidence

The tenancy began December 1, 2017 and ended November 30, 2018. Monthly rent was $1,750.00 and the tenant paid a security deposit, which was returned to him.

When the tenant moved into the rental unit—a three-bedroom apartment in a five-unit building located in a small, peaceful seaside community on Vancouver Island—he was aware that the building was potentially going up for sale. A few months later a “for sale” sign went up. Eventually, one of the tenants (the landlord) of the building purchased the property in August 2018.

In late September 2018 the tenant returned from Las Vegas and unluckily discovered that the tenants in the building had all been given eviction notices. The tenant could not find his eviction notice but did find a 1-inch piece of scotch tape on the door. He theorized that the wind must have blown away the notice; he had heard that there was a big windstorm while he was away. He attempted to find out more about his eviction, such when he was supposed to move out, but his now-former landlord was of little help.

Finally, it was made clear to him on October 15 that he was, in fact, being evicted. All along, however, he had d heard rumours from other tenants that the eviction notices were Two Month Notices to End Tenancy for Landlord’s Use of Property.

Some time after vacating the rental unit he ran into the real estate agent who had sold the building to the landlord. During the conversation between the and the agent, the tenant discovered that the landlord had re-rented the rental unit to new tenants. In closing, the tenant testified that he is “young, uneducated, and can’t afford a lawyer,” and that finding suitable accommodation in this part of the Island is difficult.

Landlord’s counsel referred me to his written submissions and outlined his client’s position. I note that the landlord or counsel did not dispute the tenant’s version of events or information as it pertains to the basic tenancy information.

A Contract of Purchase and Sale Addendum, related to a contract of purchase and sale dated August 15, 2018, included a clause that stated there was a written request from the buyers (the landlord) to the seller (the former landlord) to give notice to all tenants to vacate the premises before possession. The landlord took possession of the property (and the rental unit) on August 30, 2018.
A copy of the Two Month Notice to End Tenancy for Landlord’s Use of Property (“Notice”) was submitted into evidence by the landlord. It indicates that the former

landlord signed the Notice on September 25, 2018, with an effective end of tenancy date of November 30, 2018.

Page two of the Notice indicates that the tenancy was being ended because “All of the conditions for the sale of the rental unit have been satisfied and the purchaser asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.”

The landlord did not dispute the tenant’s position that the landlord failed to move into the rental unit within a reasonable period, but rather, “that he intended in good faith to occupy the Rental Unit. However, due to extenuating circumstances the Respondent was prevented from using the Rental Unit for its stated purpose for at least 6 months after the notice to end tenancy was given” (Respondent’s Response to Application for Dispute Resolution, page 1).

The family had discussions, likely before August 2018, about “eventually moving the family to [the Island], but they were concerned about their children first finishing their education” at school on the Mainland. And, concerns about finding a large enough place to live. The landlord has a wife and three school-age children.

Notwithstanding these concerns the landlord purchased the property in August 2018. After the tenant moved out of the rental unit the landlord spent time cleaning, painting and renovating the rental unit so that it would be suitable for him and his family.

In December 2018 the landlord again spoke to his family about moving to the Island that month. However, “the Respondent’s children did not want to move yet.” All the children were enrolled in the school. In addition, the landlord discovered that if he withdrew his two youngest children from their private school that he would not receive any refund on the balance of the year remaining. Meanwhile, the landlord’s wife, an RN who specializes in maternity care, was unable to find a suitable job on the Island. It was decided by the family that they would not move to the Island until school was ended in June 2019. This would also allow the landlord’s wife more time to find work.

The rental unit sat empty, which resulted in financial strain on the landlord. He was now in a position of having to pay rent for their home on the Mainland, his apartment on the Island, and for the mortgage on the property. Due to this strain, the landlord decided to rent out the rental unit until his family could move to the Island after school was out. He eventually rented out the rental unit, but it was (or is) only for a short time and at a monthly rent lower than what the tenant was paying.

Central to the landlord's argument as to why he ought to be excluded (by virtue of section 51(3) of the Act) from the 12-months'-equivalent-to-rent compensation that may be awarded under section 51(2) of the Act is that "It is only due to extenuating circumstances involving the Respondent children's schooling and his spouse's unsuccessful job hunt that has prevented them from immediately moving into the Rental Unit" (Respondent's Response to Application for Dispute Resolution, page 5).

In rebuttal, the tenant argued, by way of rhetorical question, "who evicts everyone?" in a multi-unit apartment when the landlord only needs one place to live.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case the tenant seeks compensation under section 51 of the Act which states:

> (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.
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> (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.
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> (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

(c) 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.

Landlord's counsel did not dispute that the landlord failed to occupy the rental unit as stated in the Notice. However, he submitted that the landlord ought to be excused from having to pay the tenant compensation under section 51(2) because of extenuating circumstances. The extenuating circumstances in this dispute are "circumstances involving the Respondent children's schooling and his spouse's unsuccessful job hunt that has prevented them from immediately moving into the Rental Unit."

Residential Tenancy Policy Guideline 50 speaks, albeit briefly, to the issue of extenuating circumstances. It states that an arbitrator "may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit." The policy then provides three examples of what might constitute an extenuating circumstance and two examples of what might not constitute such a circumstance.

To cite further from the policy, examples of an extenuating circumstance are "A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in. [. . .] A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire. [and] A tenant exercised their right of first refusal, but didn't

notify the landlord of any further change of address or contact information after they moved out."

Where the following are "probably not extenuating circumstances: […] A landlord ends a tenancy to occupy a rental unit and they change their mind. […] A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations."

These examples imply and suggest that what makes a circumstance "extenuating" is a lack of reasonable foreseeability. A death in the family or a wildfire cannot be said to be reasonably foreseen, while a landlord's change in mind or inadequate budgeting is not only reasonable, but predicable based on normal and ordinary human conduct.

Applying this approach to the landlord's circumstances, I find that his children's changing their minds (or, their respective opinions about whether to move from the Mainland to the Island) is not only a foreseeable event but an expected one. As any parent knows, children are fickle, often changing their minds on any number of issues, from whether they like (or hate) broccoli to which TV show they hope to watch. The landlord ought to have known that his children would likely resist having to move away from their friends, and, that such resistance would likely be more pronounced in the middle of a school year.

Given the above, I conclude that the circumstance regarding the children's schooling was not an extenuating one. Rather, I find that it was foreseeable and well within the realm of possibility. Similarly, the landlord's lack of due diligence in finding out about the non-refund of his children's school tuition does not make it an extenuating circumstance. Failure to act diligently ought not to later buttress a respondent's position.

Applying this approach to the circumstances of the landlord's wife's unsuccessful job hunt, I find that it too is not a circumstance of an extenuating nature as contemplated by the Act. The landlord's wife is employed as a RN maternity nurse. Landlord's counsel submitted that the wife was unable to find work between the time of the purchase of the property and the time they rented out the rental unit. However, the tenant did not submit any evidence of any job search for the period before or after the property was purchased. And, while copies of RN job listings for February and March 2019 were submitted into evidence, these provide little assistance in my making a finding that there existed extenuating circumstances that prevented the landlord from moving into the rental unit. Quite simply, the landlord did not explain why his wife's inability to find employment resulted in his being unable to occupy the rental unit.

As to the decision to re-rent the rental unit, the tenant submitted that

> After a few weeks of this arrangement, I realized that I was running into some financial difficulty because I was paying rent for my apartment in Sidney for our co-op housing in Vancouver, and on the mortgage on the Property. (Narrative, para. 31)

I find this explanation describes someone who bit off more than he could chew, and who simply failed to exercise prudence and due diligence, versus encountering an extenuating circumstance. His wife was already employed. His children were already in school. Neither set of circumstances I find are a reasonable explanation for the landlord being prevented from using the rental unit for the stated purpose as stated in the Notice. Indeed, that he was “paying rent for my apartment in Sidney” is nonsensical given that he owns the property in which the rental unit is located.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of establishing that there were, or are, extenuating circumstances that prevented, prevent, the landlord from either (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.

Given the above, I conclude that the tenant is entitled to compensation under section 51(2) of the Act in the amount of $21,000.00. Further, as the tenant was successful in his application I grant an additional award of $100.00 for recovery of the filing fee, pursuant to section 72(1) of the Act.

Accordingly, I grant the tenant a monetary order in the amount of $21,100.00, pursuant to section 67 of the Act.

Conclusion

I grant the tenant a monetary order in the amount of $21,100.00 which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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: May 1, 2019

Residential Tenancy Branch