



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 31042419

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

GENEVIEVE BARIA and NOEL BARIA , Tenant(s),

Applicant(s)

And

RANJIT SAHOTA, Landlord(s),

Respondent(s)

Regarding a rental unit at: 5131 BOOTH AVENUE, BURNABY, BC

Date of Hearing: July 23, 2019, by conference call.

Date of Decision: July 29, 2019

Attending:

For the Landlord: **C. PANDERO, LAWYER**

For the Tenant: **GENEVIEVE BARIA, RODOLF BARIA, MARK BARIA,
STEPHANIE RINGOR, and NOEL BARIA**

*Previous Decision to which reference is made herein: **File No: 31033630***



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DECISION

Dispute Codes **FFT MNDCT**

Introduction

This hearing dealt with an application by the tenants under the Residential Tenancy Act (the “Act”) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67; and
- Reimbursement of the filing fee under section 72.

The tenants attended. The lawyer CP attended for the landlord (“the landlord”). All parties present were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. No issues of service were raised. I find the tenants served the landlord with the Notice of Hearing and Application for Dispute Resolution pursuant to the Act. I find the landlord served the tenants with the evidentiary material in compliance with the Act.

Issue(s) to be Decided

Are the tenants entitled to:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67; and
- Reimbursement of the filing fee under section 72.

Background and Evidence

The tenants and the landlord entered into a month-to-month tenancy agreement in November 2015 which ended when the tenants vacated on March 1, 2019. Rent was \$2,800.00 payable on the first of the month. At the beginning of the tenancy, the tenants provided a security deposit which was returned to the tenants when they vacated.

The unit consisted of two independent suites. The parties agreed that the landlord told the tenants they had to vacate the unit as she wanted her son to live in the unit. The tenants believed the landlord was not acting in good faith and was motivated solely by wanting to increase the rent.

The tenants brought an application to dispute a Two Month Notice to End Tenancy ("Two Month Notice") which was heard on February 1, 2019. Reference to the file number appears on the first page.

A settlement was reached between the parties and a Decision issued on February 1, 2019 which included terms that the tenants would vacate the unit on March 1, 2019 and the landlord would provide one month's rent as compensation.

The previous Decision stated in part as follows:

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

- 1. This tenancy will end at 1:00 p.m. on March 1, 2019, by which time the tenants and any other occupant will have vacated the rental unit.*
- 2. In the spirit of complying with section 51 of the Act, the tenants may withhold rent for the month of February, 2019.*
- 3. Both parties agree that this tenancy ends by way of this agreement and the 2 Month Notice to End Tenancy for Landlord's use is cancelled and of no further force or effect.*
- 4. The rights and obligations of the parties under the Act continue until the tenancy ends in accordance with this agreement.*
- 5. This settlement comprises the full and final settlement of the tenants' application.*

The parties agreed that the landlord advertised both units for rent shortly after the tenants vacated. The landlord explained that the landlord's intention was to rent either of the units; the remaining unit would be occupied by her son.

The landlord submitted a copy of a lease with her son dated May 1, 2019; the landlord stated that the delay in occupancy from the vacancy date to May 1, 2019 was due to a physical injury of the son's which required surgery. The landlord submitted supporting medical documents.

The tenants claimed that the landlord did not take steps within a reasonable period after they vacated to have the son move in to the unit.

A copy of the Two Month Notice was not submitted as evidence at this hearing.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

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.

Section 6 of the Rules of Procedure describes the standard of proof as follows:

6.6 The standard of proof and onus of proof

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 most circumstances this is the person making the application.

In this case, the onus is on the tenants to prove they are entitled to a claim for a monetary award.

The tenants' claim they are entitled to 12 months' rent as compensation under section 51. They claim that they vacated the unit at the landlord's demand to allow the landlord's son to move in and that this did not take place until at least two months after they vacated.

Section 51 states in part as follows (emphasis added):

(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.

For this section to be applicable, a Two Month Notice must have been issued that complies with section 52 of the Act.

Section 49(7) states:

(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] ...

Section 52 states that, to be effective, the Two Month Notice must be in the approved form and must provide essential information about the tenancy and the landlord's grounds for issuing the tenancy.

Section 52 states:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*
(a) be signed and dated by the landlord or tenant giving the notice,
(b) give the address of the rental unit,
(c) state the effective date of the notice,
(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
(e) when given by a landlord, be in the approved form.

The tenants did not submit as evidence a copy of the Two Month Notice. If such a Notice was not issued, the tenants moved out of the unit under their own volition pursuant to the settlement agreement with the landlord in the previous Decision. The tenants were under no obligation to vacate the rental unit when they did.

Because no copy of the Two Month Notice was submitted as evidence, I find that the tenants have failed to meet the burden of proof on a balance of probabilities that any Two Month Notice was issued. As such, I am unable to determine whether any such Notice complied with section 52 as required under the Act. Accordingly, I find the tenants have not established that they are entitled to compensation under section 51.

I therefore dismiss the tenants' claim without leave to reapply.

Conclusion

I dismiss the tenants' claim 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 *Residential Tenancy Act*.

Dated: July 29, 2019



S. Green, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

#RTB-136 (2014/12)

