



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, FFT

Introduction:

The issues in dispute in this Application for Dispute Resolution were the subject of a dispute resolution hearing on January 22, 2019. The Arbitrator presiding at that hearing awarded the Tenants a monetary Order for \$13,300.00, dated February 20, 2019.

The Landlord filed an Application for Review Consideration. The Arbitrator considering that Application for Review determined that there were sufficient grounds for review and a new hearing was scheduled.

A hearing was convened on June 28, 2019 to consider the merits of the Tenants' Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution. That hearing was adjourned for reasons outlined in my interim decision of June 28, 2019. The hearing was reconvened on August 26, 2019 and was concluded on that date.

The male Tenant stated that on, or about, July 04, 2019 all evidence the Tenants submitted to the Residential Tenancy Branch was served to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Agent for the Landlord stated that in mid-July of 2019 all evidence submitted to the Residential Tenancy Branch by the Landlord was served to the Tenants, via registered

mail. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided:

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Residential Tenancy Act (Act)* because steps were not 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 the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Background and Evidence

The Tenants and the Agent for the Landlord agree that:

- this tenancy began in 2014 or 2015;
- at the end of the tenancy the monthly rent was \$1,100.00;
- the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use, which declared that they must vacate the rental unit by September 30, 2018; and
- The Notice to End Tenancy declared that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or close family member of those parties intend in good faith to occupy the rental unit.

The Tenants are seeking compensation because the rental unit was advertised for rent after they vacated the rental unit.

The Agent for the Landlord stated that:

- when the rental unit was purchased the Landlord and his family intended to move into the rental unit;
- the Landlord and his family were living in Hong Kong when the unit was purchased;
- in October of 2018 the Landlord's wife was diagnosed with a serious medical condition that required surgery;
- the Landlord's wife underwent surgery in Hong Kong in November of 2018;

- as a result of the surgery and health complications related to that surgery the Landlord and his family have not moved to Canada;
- the rental unit was advertised for rent in October of 2018; and
- the rental unit was re-rented on December 01, 2018.

The Landlord submitted a letter from a medical practitioner that indicates a female underwent surgery in November of 2018. The male Tenant noted that there is no documentary evidence that establishes the female referred to in the letter is the Landlord's wife. The Agent for the Landlord stated that the female referred to in the letter is the Landlord's wife.

The Tenants submitted a document from the Land Title Office, which indicates the Landlord also owns property in the City of Vancouver. The Agent for the Landlord stated that he believes the Landlord's mother lives at that address. The male Tenant stated that if the Landlord's mother lives at that address he expects she would have provided the Landlord with documents that were mailed to that address.

Analysis

On the basis of the undisputed evidence I find that the Tenants were served with a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*, which required them to vacate the rental unit by September 30, 2018. This Notice declared that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or close family member of those parties intend in good faith to occupy the rental unit.

Section 51(2) of the *Act* stipulates that if steps were not 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 the rental unit was 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 must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

On the basis of the undisputed evidence I find that the rental unit was re-rented on December 01, 2018 and that the Landlord or a close family member of the Landlord has not moved into the rental unit. I therefore find that the Landlord may be subject to penalty because the Landlord did not take reasonable steps to move into the rental unit and the rental unit was not occupied by the Landlord or a close family member for at least six months after the effective date of the Notice to End Tenancy.

Section 51(3) of the *Act* permits me to excuse a landlord from paying the tenant the amount required by section 51(2) of the *Act* if extenuating circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or 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.

Residential Tenancy Branch Policy Guideline #50, with which I concur, provides the following examples of circumstances where it would be unreasonable and unjust for a landlord to pay compensation:

- 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.
- 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.

Residential Tenancy Branch Policy Guideline #50 provides the following examples of circumstances that are probably not extenuating circumstances:

- 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.

On the basis of the undisputed evidence I find that the Landlord's wife underwent a serious surgery in Hong Kong in November of 2018 and that, as a result of the wife's surgery and associated health complications, the Landlord and his family has not yet moved to Canada.

I find that the letter from the medical practitioner that was submitted in evidence corroborates the Landlord's submission that his wife underwent a serious surgery in November. Although there is no documentary evidence that establishes that the female referred to in the letter is the Landlord's wife, I accept the undisputed testimony of the Agent for the Landlord, who testified the female referred to in the letter is the Landlord's wife.

I find that the surgery and associated health complications were an extenuating circumstance that prevented the Landlord and his wife from moving to Canada. As there were extenuating circumstances that prevented the Landlord from moving into the

rental unit after the effective date of the Notice, I find that the Landlord is not subject to the penalty imposed by section 51(2) of the *Act*. I therefore dismiss the Tenants' application for compensation.

In adjudicating this matter I have placed no weight on the document from the Land Title Office, which indicates the Landlord owns property in the City of Vancouver. I find that this evidence is not relevant to whether or not the Landlord moved into the rental unit or whether there were extenuating circumstances that prevented him from doing so.

As the Tenants have failed to establish the merits of their Application for Dispute Resolution, I dismiss their claim to recover the fee for filing the Application for Dispute Resolution.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed, without leave to reapply. The previous monetary Order awarded to the Tenants, dated February 20, 2019 is set aside and is of no force or effect.

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: August 27, 2019

Residential Tenancy Branch