



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought monetary compensation from the Landlord pursuant to sections 49 and 51(2) of the *Residential Tenancy Act*.

Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 1:54 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Landlord testified that she served the Landlord with the Notice of Hearing and the Application on July 10, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Tenant stated that the package was returned.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of July 15, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's 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 Tenant confirmed her email address during the hearing as well as her understanding that this Decision would be emailed to them.

Issue to be Decided

Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

The Tenant testified that the tenancy began January 2015. She paid monthly rent in the amount of \$700.00 which by the end of the tenancy was raised to \$800.00 per month.

On January 11, 2019 the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use (the "Notice"). The effective date of the Notice was April 1, 2019. The reason cited on the Notice was that "[t]he rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The Tenant accepted the Notice and vacated the rental unit on April 1, 2019.

The Tenant confirmed that the Landlord began showing the rental unit to prospective tenants even before the Tenant moved out.

As of February 26, 2019 the Landlord had begun advertising the rental unit online for \$1,075.00 per month. The Tenant provided a copy of this ad in evidence. The ad clearly noted the Landlord's name as and provided photos of the rental unit. The Tenant confirmed that she reviewed the photos and confirmed that it was in fact her rental unit.

Analysis

After consideration of the Tenant's undisputed testimony and evidence and on a balance of probabilities I find as follows.

A landlord may end a tenancy provided they do so in accordance with *Residential Tenancy Act*. Section 49 allows a landlord to end a tenancy should they wish to regain possession of the rental unit for their own use. A landlord may not end a tenancy simply because they wish to re-rent the unit to others at a higher price.

The Tenant applies for monetary compensation pursuant to sections 49 and 51(2) of the *Act* which provide 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.

The Landlord issued the Notice indicating that she, or a close family member would be occupying the rental unit pursuant to section 49(3) of the *Act*. The Tenant testified that the Landlord informed her that her daughter would be moving in.

Copies of text communication between the parties were provided in evidence and which confirms the Tenant accepted the Notice and informed the Landlord she would move out on the effective date of the Notice, April 1, 2019.

I find that the Landlord did not use the rental unit for the purpose stated on the Notice, rather she immediately advertised the rental unit for a higher rent. I am persuaded by the Tenant's testimony that the Landlord began showing the rental unit to others while the tenancy was ongoing, and the documentary evidence which confirms the Landlord advertised the rental unit for rent rather than having the unit occupied by a close family member.

I accept the Tenant's evidence that monthly rent was \$800.00 when the tenancy ended. I therefore find the Tenant is entitled to monetary compensation pursuant to section 51(2). As monthly rent was \$800.00 at the time the tenancy ended, the Tenant is entitled to the sum of \$9,600.00 representing 12 months rent pursuant to section 51(2)(b). In furtherance of this the Tenant is granted a Monetary Order pursuant to section 67 in the amount of **\$9,600.00**. This Order must be served on the Landlord and may be filed and enforce in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Tenant's claim for monetary compensation in the amount of **\$9,600.00** from the Landlord is granted.

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 10, 2019

Residential Tenancy Branch