



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, filed on May 27, 2019, wherein the Tenant sought monetary compensation from the Landlord in the amount of \$13,100.00.

The hearing of the Tenant's Application was originally scheduled for 1:30 p.m. on September 6, 2019. By Interim Decision dated September 6, 2019 I adjourned the hearing to permit filing and service of necessary evidence.

The hearing reconvened at 11:00 a.m. on November 5, 2019. Both parties called into both hearings 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. The Landlord also filed the evidence requested in my Interim Decision. No other 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.

Issue to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

In support of her claim the Tenant testified as follows. She confirmed that she moved into the rental unit in 2007. Monthly rent was \$950.00 when the tenancy began.

The Tenant testified that her rent was raised by \$100.00 in May of 2018 to \$1,050.00. She was given notice of the rent increase in January of 2018. She stated that she agreed to this rent increase but was later told by the Residential Tenancy Branch that she could ask for the amounts she paid over her original rent. As the tenancy ended on November 1, 2018, and the Tenant was granted a free month's rent pursuant to a 4 Month Notice, the Tenant sought \$500.00 representing \$100.00 per month for the five month's she paid the \$1,050.00 per month rent.

The Tenant testified that she received the 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit September 28, 2018 (the "Notice"). The reasons noted on the Notice was that the rental unit was to be substantially renovated and converted to non-residential use.

The Notice also included letter dated September 28, 2019 which read as follows:

"I, [Tenant's name], accept the 4-month notice from [Landlord's company name] even though the permits for the proposed changes have not been obtained. I believe they will act as they have outlined. I am also aware that I will receive my last months' tenancy rent free as per the landlord requirements for a 4-month notice to end tenancy."

The effective date of the Notice was January 31, 2019. The Tenant stated that she moved out at the beginning of November 2018 and did the move out inspection on November 6, 2018.

The Tenant testified that to her knowledge the rental unit has not been substantially renovated or converted to non-residential use. The Tenant further testified that to her knowledge, the Landlord's employee, D.D., has been living in the rental unit.

The Tenant sought 12 month's compensation pursuant to section 51(2) of the *Act*, which based on the \$1,050.00 monthly rent is \$12,600.00.

In response to the Tenant's testimony and submissions, the Landlord testified as follows.

The Landlord stated that the Tenant agreed to \$100.00 rent increase during the tenancy. She confirmed that for the first 11 years of the tenancy she did not raise the rent. She stated that when she communicated with the Tenant in January of 2018 that she wanted to raise the rent, the Tenant responded that she was agreeable to this and thanked the Landlord for not raising this sooner. This communication occurred by email, a copy of which was provided in evidence. The Landlord stated that she took the Tenant's email as confirmation that she agreed to the rent increase.

The Landlord further testified that she also prepared a new tenancy agreement for February 13, 2018 indicating that the Tenant was the only tenant (her boyfriend was on the original agreement and had moved out) and noting the agreed upon rent as \$1,050.00 as of May 1, 2018. The Tenant signed this agreement further confirming her agreement to the increase.

In terms of the Notice, the Landlord testified as follows. She confirmed that her intention was, and continues to be, to convert the property to non-residential use. She stated that she is still in the process, which has been much more time consuming than she anticipated. She testified that they go before City Council on November 18, 2019 at which time they hoped to obtain the final approval. She stated the City has informed them that they need to have some residential portion, which she did not understand to be required when she gave the Notice.

Documentary evidence supplied by the Landlord confirms the communication with the City in this respect. This communication is dated August 2019.

The Landlord testified that they "completely gutted" the rental unit. When asked to provide further details of the work she stated they did the following:

- removed the floors and replaced all the flooring with a commercial grade laminate;
- repaired the kitchen including repairing the cabinetry;
- performing wall repair; and
- tore out part of the laundry area.

The Landlord stated that there was no one living in the rental unit until the beginning of March 2019 as the rental unit was "absolutely torn apart".

The Landlord stated that there is considerable crime in the area in which the rental unit is located. She stated that the rental unit was being broken into nightly and to protect

their property they asked D.D. to move into the rental unit, which he did on March 1, 2019 D.D. The Landlord stated that D.D. is the main security person at the Landlord's car lot. She further stated that the rental unit is right beside the car lot and he is able to be there immediately if the alarm goes off.

The Landlord confirmed that when she issued the Notice they did not have the approvals and permits in place. She further testified that the Tenant was aware of this and signed a letter confirming her agreement.

The Landlord testified that there never was any intention to move D.D. into the property but when the house was being broken into nightly, the Landlord felt it was the only way to protect the property.

The Landlord also stated that they had an owner of an insurance company, A.L., in place to rent the home as a commercial space as the home is right in amongst four car dealerships. She stated that she had no idea, at the time, how difficult it would be to go through the process with the City and as a result of how long it took A.L. had to find somewhere else to operate her insurance business.

The Landlord stated that she is now informed that the work will require some residential component. She is not sure if she will have to tear down the home and create residential space above the commercial space, or if they can satisfy the City's requirements with the current building.

I advised the parties during the hearing that I would access "Google Earth" to view the location of the rental home. This resource shows the home as located on the corner of two busy roads, and next to a car dealership. As the Landlord testified, the rental home appears to be located in the middle of four car dealerships.

The Landlord called D.D. as a witness. He confirmed that he is head of security at the Landlord's car dealership and has been there 2.5 years.

D.D. stated that he now lives at the rental unit, which is right next to the dealership. He stated that he and his wife and son moved into the rental home in March of 2019. He confirmed he pays \$1,200.00 in rent. He also stated that if the house is no longer available, he will move back to another community where they were previously renting a basement suite from friends.

D.D. stated that it was not his original intention to live in the property, but he moved in for security reasons. He stated that while the house was empty and in the process of being rezoned, the Landlord realized she needed to have someone around. He stated that the rental unit is located in a very high crime area; further he confirmed that he has personally made many police reports both with respect to the car lot and the house as both properties have been damaged due to break-ins and vandalism.

D.D. stated that he was in the house prior to March 2019 while renovations were going on. In terms of those renovations he testified as follows:

- all the flooring was removed and replaced, including replacing parts of the rotten subfloor;
- the wall in the dining room was fixed;
- the drywall in the hallway was replaced;
- the sink and plumbing in the laundry room was fixed;
- the sink and toilet were fixed in the main bathroom;
- a baseboard heater was moved in the master bedroom;
- a closet door was fixed;
- the outside siding was fixed;
- the roof was patched; and,
- many of the fixtures were replaced.

D.D. stated that it is his understanding that the plan for the rental property is to have it rezoned to commercial use. He stated that he further understood that there was an insurance company that was to move into the building.

The Landlord also called M.E., her ex-brother in law, as a witness. M.E. stated that his position at the dealership is "Operations Leader", which he stated is simply a different term for General Manager.

M.E. stated that the rezoning application is moving along, albeit slower than they originally anticipated. He stated that they have had an upcoming neighbourhood hearing and they are waiting for the City to get back to them on when their hearing before the City will be scheduled.

M.E. stated that the intention was to turn the property into commercial property and in particular to rent it to an insurance company. He stated that the insurance companies send "road runners" to their dealership 4-5 times a day. The insurance company was looking to get out of their lease and the plan was to have them move into the rental unit.

M.E. stated that once the property is rezoned they may have to do some work to make it more of an “office building”.

In terms of the delay, M.E. stated that the process to get the rezoning is very long and they did not know it would take this long. They ended the tenancy as they believed it would be a “way quicker turn around”. He stated that they wanted to make sure the transition would be really easy for the Tenant, so that she could have time to find a place to live, and then 4-6 months later they would have everything they needed.

M.E. testified that they did not originally plan to have D.D. move into the property. He reiterated that the original plan was to have the work done to convert the space to commercial use and have the insurance company move in as soon as possible.

M.E. also testified that they moved D.D. into the property for security reasons. He stated there is a homeless camp just outside the dealership fence and they had break ins daily at the house and the lot. He stated that they did not realize that security was going to be as bad as it was. M.E. stated that this is a temporary solution and D.D. knows that he will have to move when the rezoning is complete.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

The Tenant seeks monetary compensation from the Landlord in the amount of \$13,100.00 including \$500.00 for rent she paid over the original amount and \$12,600.00 pursuant to section 51(2) of the *Act*.

In terms of her claim for compensation for an alleged rent overpayment I find as follows.

Rent may only be increased in accordance in the *Residential Tenancy Act* and the *Residential Tenancy Regulation*. Section 43 of the *Act* provides in part as follows:

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

...

A review of the email correspondence between the parties confirms the Tenant agreed to the \$100.00 rent increase. As noted, the Tenant confirmed her agreement when she testified, and stated that she only asked for the funds back when she was advised that was a possibility.

I find the Tenant agreed to the rent increase in writing and I therefore find the rent increase is permitted by section 43(1)(c) of the *Act*. Consequently, **I dismiss the Tenant's claim for compensation for any amount paid pursuant to the rent increase.**

I will now address the Tenant's claim for compensation equivalent to 12 months' rent pursuant to sections 49 and 51 of the *Residential Tenancy Act*.

A landlord may regain use of a rental property for their own use pursuant to section 49 of the *Act*; the relevant portions of that section read as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

...

"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;

...

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

...

(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.

...

(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.

...

In the case before me the Landlord issued the Notice pursuant to section 49(6)(a) and (f) of the *Act*. The reasons cited on the Notice were that the Landlord intended to:

- perform renovations or repairs that are so extensive that the rental unit must be vacant; and,

- convert the rental unit to non-residential use.

The Landlord also provided the following additional information on the Notice:

<i>Planned Work</i>	<i>Details of Work</i>
<i>Change the use of the house to Business use. (insurance)</i>	<i>Upgrade the house to meet commercial use. Renovate the existing rooms from personal use to office space. Change the landscape to accommodate parking.</i>

The Tenant submits that the Landlord did not perform extensive renovations requiring vacant possession, nor was the rental unit used for the stated purpose. She therefore seeks compensation pursuant to section 51 of the *Act* which reads as follows:

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.

Although the Tenant vacated the rental unit early, the evidence confirms that the effective date of the Notice was January 31, 2019.

The Landlord testified that the rental unit was “gutted”. When asked to provide further details she stated that the floors were replaced with commercial grade laminate, the kitchen cabinetry was repaired, some walls were repaired, and part of the laundry area was “torn out”.

The Landlord's witness, D.D., also testified as to the renovations and stated that: the flooring was replaced; the wall in the dining room and hallway was fixed; the sink and plumbing in the laundry room and sink and toilet in the main bathroom were fixed; a baseboard heater was moved; a closet door was fixed; the outside siding was fixed; the roof was patched; and, many fixtures were replaced.

While it may be more economical or more convenient to perform such work in a vacant home, the *Act* specifically requires that the renovations must be so extensive as to *require* vacant possession. I am not satisfied, based on the evidence before me, that the rental unit was renovated to such an extent. I find that the work described by the Landlord and her witness is more cosmetic and could have been completed while the tenancy continued.

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. I further find that the tenancy did not need to be terminated to accomplish the work.

I wish to point out however, that even in the event I had found the renovations were so extensive as to *require* vacant possession (which I have not), I find the rental unit was not used for the stated purpose.

As of March 2019, the Landlord's employee, D.D., was living in the rental unit. While D.D. works for the Landlord as head of security and was providing security services for the rental home and the Landlord's car lot, D.D. also paid monthly rent of \$1,200.00.

The Notice informed the Tenant that the rental unit would be converted to non-residential use, yet as of March 1, 2019, one month after the effective date of the Notice, the unit was used as a rental home for the Landlord's employee, D.D. This accommodation is not provided to D.D. as a condition of his employment, rather, D.D. is required to pay rent, which is in excess of the amount paid by the subject Tenant.

The evidence before me indicates the Landlord made cosmetic improvements to the rental home. The work performed does not suggest the home was converted to non-residential use. None of the renovations described at the hearing impacted D.D.'s ability to move into the home with his family on March 1, 2019. As an example, although the Landlord testified the intention was to have an insurance company rent the building, D.D.'s testimony was that the renovations included repairing the laundry facilities in the home.

The Landlord testified that they are in the process of converting the home to non-residential use. The evidence provided by the Landlord includes communication between the Landlord and the City in which the rental unit is located; however, that communication occurred in August of 2019, some seven months after the effective date of the Notice.

I do not find the alleged delay with the rezoning application to be "extenuating circumstances" pursuant to section 51(3). Presumably there would be considerable

communication between the Landlord and the City in terms of her rezoning application. Had unforeseen barriers arisen during this process, they likely would have been documented and could have been provided in evidence. The evidence before me shows minimal communication, occurring more than six months after the effective date of the Notice and ten months after the tenancy ended.

It is notable that the commercial tenant did not testify. I find it more likely that when the insurance company was unable to move into the building, the Landlord offered the building to her employee as a rental home for him and his family. The fact her employee was conveniently located and able to provide security services for the home and the car lot does not render the property non-residential.

I therefore find the Tenant is entitled to compensation pursuant to section 51(2) of the *Act*.

Conclusion

The Tenant's claim for compensation pursuant to an illegal rent increase is dismissed.

The Tenant's claim for compensation pursuant to section 51(2) is granted. The Tenant is entitled to the equivalent of 12 months' rent, which based on the \$1,050.00 monthly rent is \$12,600.00. In furtherance of this, the Tenant is granted a Monetary Order in the amount of **\$12,600.00**. This Order must be served on the Landlord and may be filed and enforced 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: November 26, 2019

Residential Tenancy Branch