



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, 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 and recovery of the filing fee.

The Tenants' Application was scheduled for 1:30 p.m. on November 18, 2019. Only the Tenant, A.K., called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

A tenancy runs with the sale of a property such that when a property sells, the Purchaser becomes the Landlord. The Landlord named on the Application, who was the Purchaser of the property during the tenancy did not call into this hearing, although I left the teleconference hearing connection open until 1:49 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 Tenants' hearing package. The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on August 2, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

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 August 7, 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.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. Should the Tenants recover the filing fee.

Background and Evidence

The Tenant testified that the tenancy began September 1, 2017. Monthly rent was \$500.00 per month. During the tenancy the Tenant's brother, D.K., was the owner of the rental property and the Landlord.

On February 12, 2019 the Tenant received a 2 Month Notice to End Tenancy for Landlord's Use (the "Notice"). The reasons cited on the Notice were that the rental unit had sold and the Purchaser, M.G., had asked the Landlord in writing to give notice to end the tenancy as the Purchaser, or a close family member, intended to occupy the rental unit. The Purchaser's contact information was provided for on the Notice. The Tenant stated that to her knowledge the closing date for the sale of the rental property was May 1, 2019.

The Tenant stated that they accepted the Notice and moved from the rental unit on May 1, 2019.

On May 7, 2019, the Purchaser advertised the rental unit for rent at \$950.00 per month. The Tenant provided a copy of the online ad in evidence before me. The Tenant stated

that to her knowledge neither the Purchaser, nor his close family, occupied the rental unit and instead he rented it out to new tenants for a higher price.

Analysis

The Tenant seeks monetary compensation from the Purchaser pursuant to sections 49 and 51 of the *Residential Tenancy Act* which read 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 for a purpose referred to in subsection (3),

(4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) 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
- (c) 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*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 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) In addition to the amount payable under subsection (1), if

- (a) steps have not been 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
- (b) the rental unit is 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The evidence before me confirms that the Landlord issued the Notice pursuant to section 49(5) which allows a Landlord to end a tenancy because the property has sold and the Purchaser, or the Purchaser's close family member, intends in good faith to occupy the rental unit.

The undisputed evidence of the Tenants is that the property was not occupied by the Purchaser or the Purchaser's close family, instead it was rented out by the Purchasers to third parties at a higher price.

I therefore find the rental unit was not used for the stated purpose on the Notice. As such and pursuant to section 51(2) the Tenants are entitled to monetary compensation in the amount of **\$6,000.00**, representing 12 months of rent at \$500.00 per month.

As the Tenants have been substantially successful in their Application, I also award them recovery of the filing fee for a total monetary award of **\$6,100.00**.

Conclusion

The rental unit was not used for the purpose stated on the Notice; as such, the Tenants are entitled to monetary compensation pursuant to sections 49 and 51(2) in the amount of **\$6,000.00**.

The Tenants are also entitled to recovery of the \$100.00 filing fee for a total award of **\$6,100.00**.

In furtherance of this Decision, I grant the Tenants a Monetary Order in the amount of **\$6,100.00**. This Order must be served on the Purchaser, M.G., and may be filed and enforced as an Order of 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 18, 2019

Residential Tenancy Branch