



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

The tenants (“applicant”) applied for dispute resolution on October 29, 2019 for compensation under section 51 of the *Residential Tenancy Act* (“the Act”) related to a tenancy that ended on November 1, 2017. The applicant has met the timeline to apply for compensation pursuant to section 60(1) of the Act.

One applicant and both respondents appeared for the hearing. They affirmed they would provide truthful testimony and were given a full opportunity to be heard and ask questions. No witnesses were called.

The applicant provided documentary evidence and testimony that she provided the notice of this hearing and all supporting evidence (“application”) to the respondents (“purchasers”) by registered mail on November 7, 2019. The purchasers acknowledged receiving the application. I confirmed with the purchasers they submitted no evidence in response to the application. The purchasers said that when they received the application, they saw they had to provide relevant and legible evidence and because they have not ever been through this before they did not know how to do this.

I reviewed the notice of hearing and find that it includes instructions to the respondents on how to submit evidence as well as numerous web links to resources such as the Rules of Procedures and other resources for preparing for a hearing. The respondents had at least four months to prepare for this hearing.

Pursuant to sections 89(1)(c) and 90(a), I deem the purchasers served with the application on November 13th, 2020.

Issue to be Decided

Is the applicant entitled to compensation equivalent of two month's rent payable under the tenancy agreement to pursuant to Section 51(2) BEFORE the Act was amended effective May 17, 2018?

51(2) In addition to the amount payable under subsection (1) [compensate tenant the amount that is equivalent to one month's rent payable under the tenancy agreement], 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.

Background and Evidence

The applicant provided the two-month notice ("the notice") issued by her landlord pursuant to 49(5) on August 18, 2017 to end her tenancy effective November 1, 2017 because a close family member of the purchasers of the rental unit was going to occupy it.

The applicant provided documentation of the purchase of the rental unit including "Tenant-Occupied Property – Buyer's Notice to Seller for Vacant Possession" signed by one of the respondents on August 15, 2017 and "Vendor's List of Adjustments" which names both respondents as the purchasers of the rental unit; the sale closed November 3, 2017.

The applicant provided a written statement from an individual claiming to be a tenant in the rental unit from November to February 2018. The applicant provided a written, witnessed statement from the landlord who issued the notice. The statement attests to the landlord's decision to reduce the rent due to the sale of the rental unit and communication she had with the purchasers regarding alleged repairs required to the rental unit after the sale closed. The letter states the purchasers advised her in a text message (which is not in evidence) a close family member had moved in to the rental unit, but then moved out within the first month.

The applicant testified the rent was \$950.00 per month at the end of the tenancy; it was lowered from \$1050.00. She provided a partial tenancy agreement to substantiate this. She testified she wanted to stay in the rental unit and struggled to find a new home. In late October 2017, 10 days prior to the effective date of November 1, 2017, she texted the realtor involved in the purchase of the rental unit for help to find a new home. The text exchange with the realtor is in evidence.

The purchasers are a married couple and believe they acted in good faith and testified that their close family member, one of their mothers ("their mother") intended to occupy the rental unit, but their plans changed. The purchasers testified that prior to their immigration to Canada in 2008 their mother lived with them and they were a close family; they wanted to maintain this closeness after they emigrated. For eight years they pursued an application for their mother to immigrate to Canada to live with them and keep their family intact. Their mother's application to immigrate to Canada was eventually processed and in the summer 2016 she moved in with the purchasers as they had planned for eight years. The winter weather was very difficult for their mother, so in August 2017 they sought to purchase a dwelling for her on the west coast of BC, in a city they had visited on vacation. They made an offer to purchase the dwelling in which the applicant's basement rental unit was located. There is also an upper unit in the dwelling. They were asked to sign the "Tenant-Occupied Property – Buyer's Notice to Seller for Vacant Possession" and did so.

Although their mother was supposed to move into the applicant's former basement rental unit, their mother returned to her home country on September 23, 2017. The purchasers could not relocate to the west coast of BC with their mother because they have successful careers as professional engineers in another province. The purchasers advertised the upper unit for rent and tried to find a tenant who would support their mother; their mother does not speak English and knows no one in the city. They did find a tenant with a surname suggesting he was the same ethnicity as their mother; however, the tenant, who moved into the upper unit on November 4, 2017, was unable to support their mother in the manner the purchasers envisioned. They had a good, meaningful visit with their mother between August 2016 and September 2017. They decided their mother would not move in to the rental unit and would return to her home country instead. The purchasers advertised for a tenant for the basement unit and it was rented effective November 4, 2017. There were new tenants with no family ties to the purchasers in the upper and basement units within days of the effective date of the notice issued to the applicant.

The purchasers stated the tenant was compensated by the landlord with lower rent of \$950.00 per month effective August 1, 2017 and the purchaser's realtor assisted the tenant in finding a new rental unit to occupy on November 1, 2017.

Analysis

In this case, it is the purchasers, not the landlord, who are responsible for accomplishing the purpose for which the tenancy was ended. "Purchaser" means a person that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit per section 49(1) of the Act. The notice was issued pursuant to the following provision of the Act:

49(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.

The purchasers do not dispute that a close family member did not move into the rental unit. The purchasers presented a defense of 'no harm, no foul' in so far as it's true their mother did not move in, but the applicant was not harmed because she received reduced rent and assistance finding a new home, so the purchasers should not be penalized.

In order to be excused from paying compensation to the tenant under 51(2), the landlords must establish **extenuating circumstances** pursuant to section 51(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.

Policy Guideline #50 provides additional information about when compensation is due and the nature of extenuating circumstances:

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months. This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy. A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

....

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in...

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.

Did the purchasers experience extenuating circumstances which prevented their mother from occupying the rental unit?

The purchasers described a close family unit that they wanted to keep intact. The purchasers did not testify they had any plan to relocate with their mother. The purchasers' testimony about finding a tenant for the upper unit to support their mother's relocation is not credible in the absence of testimony or corroborating evidence of when and how they would recruit such a supportive tenant. Their only plan was speculating about the significance of a tenant's surname. The purchasers provided no convincing evidence of a credible plan for their mother to live in the rental unit while the purchasers remained in another province, thus I do not find there were extenuating circumstances. The reason the purchasers gave for their mother not occupying the rental unit—isolation from her family--should have been anticipated by the purchasers given their stated focus on keeping the family intact. Circumstances that are anticipated cannot be considered extenuating, thus I do not find the purchasers have met the standard to be

excused from the compensation provided for in section 51(2) of the Act and further described in policy guideline #50.

Furthermore, the actions of the landlord to mitigate the impact of the end of the tenancy on the applicant by reducing the rent, and the assistance provided by the purchasers' realtor to the applicant to help her find a new place to reside, do not excuse the purchasers from the compensation provided for in section 51(2) of the Act.

Conclusion

Pursuant to section 51(2) of the Act, I award the applicant double the monthly rent payable under the tenancy agreement, namely 2 x \$950.00 for a total award of \$1,900.00.

I issue a monetary order to the applicant which she must serve to the purchasers. Should the purchasers fail to pay the monetary award, the applicant may seek to enforce this order in the small claims division of BC provincial court.

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: March 18, 2020

Residential Tenancy Branch