



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On August 18, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with R.L. attending as an advocate for the Tenant. The Landlord did not make an appearance at any time during the 24-minute teleconference hearing. All parties in attendance provided a solemn affirmation.

R.L. advised that the Notice of Hearing package was served to the Landlord’s address listed on the Purchaser Information section of the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) by registered mail on August 21, 2020. He also indicated that a copy of this same package was served to the dispute address by registered mail on August 21, 2020 (the registered mail tracking numbers are noted on the first page of this Decision). The registered mail tracking history indicated that both of these packages were delivered. Based on this undisputed testimony and evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been deemed to have received the Notice of Hearing package five days after it was mailed.

R.L. advised that the Tenant’s evidence was included in the Notice of Hearing package. However, additional evidence was also served to the Landlord by Xpresspost on October 28, 2020. A copy of this additional evidence was served in two separate packages. One package was sent to the Landlord’s address listed on the Purchaser Information section of the Notice and one package was sent to the dispute address (the Xpresspost tracking numbers are noted on the first page of this Decision). The

Xpresspost tracking history indicated that both of these packages were delivered. As this evidence was served within the timeframe requirements pursuant to Rule 3.14 of the Rules of Procedure and in accordance with Section 88 of the *Act*, I am satisfied that the Landlord was sufficiently served with the Tenant's evidence. This evidence was accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation based on the Notice?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

R.L. advised that the tenancy started on December 1, 2011 and the tenancy ended when the Tenant gave up vacant possession of the rental unit before February 29, 2020, due to being served the Notice. Rent was established at \$2,000.00 per month and was due on the first day of each month. A security deposit of \$1,000.00 was paid. A signed copy of the tenancy agreement was submitted, as documentary evidence, for consideration.

He stated that the Notice was posted on the Tenant's door on or around January 8, 2020. The reason that was checked off on the Notice was "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 this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The effective end date of the tenancy was noted as March 10, 2020 on the Notice. He submitted, as documentary evidence, a copy of this Notice for consideration.

He stated that the Tenant moved across the lane from the rental unit and could see the rental unit from his new residence. The rental unit remained vacant and no one moved in after the effective date of the Notice. He referenced signed statements, submitted as documentary evidence, that confirm that no one moved into the rental unit at any point. He submitted Land Title Documents indicating that the purchaser was on title for the rental unit. As well, he referenced pictures of mail that was sent to the rental unit after the Tenant vacated. These letters were addressed to the Landlord at the rental unit.

He also advised that the rental unit was demolished in September 2020 and he cited pictures of the site where the rental unit was already demolished as of September 10, 2020. He stated that acquiring permits to demolish the rental unit would have taken months, so this support the Tenant's position that the Landlord had no intention of ever occupying the rental unit. In addition, he referenced a WorkSafeBC Notice of Project document, that was submitted as documentary evidence, and this indicated that the rental unit was already scheduled for demolition as far back as August 15, 2020.

As such, the Tenant is seeking compensation in the amount equivalent to 12 months' rent (**\$24,000.00**) pursuant to Section 51(2) of the *Act*, as the Landlord did not use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49(5) of the *Act* states the that the Notice may be served 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.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. Section 53 of the *Act* indicates that any incorrect date on the Notice will automatically self-correct the right date. In reviewing this Notice, the Landlord noted that the effective end date of the tenancy was March 10, 2020. However, as rent was due on the first of each month, and as this Notice was dated January 8, 2020, the effective date of the end of the tenancy would automatically self-correct to March 31, 2020. Other than this, I find that the Notice meets all of the requirements of Section 52 and that it is a valid Notice.

With respect to the Tenant's claim for twelve-months' compensation owed to her as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was dated January 10, 2020 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

51 (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.*

With respect to this situation, I also find it important to cite Policy Guidelines # 2A and # 50. Policy Guideline # 2A clarifies the six-month occupancy requirement stating that “The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).”

Furthermore, Policy Guideline # 50 notes that “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.”

Finally, this Policy Guideline outlines the following about extenuating circumstances: “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.
- 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.

The following are probably not extenuating circumstances:

- A 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”

Regarding this Application, what I have to consider is whether the Landlord followed through and complied with the *Act*, and used the rental unit for the stated purpose for at least six months after the effective date of the Notice. I find it important to note that the Tenant has provided signed statements, as documentary evidence, to support his claim that the Landlord has not occupied the rental unit at any point after the effective date of the Notice.

Furthermore, the Tenant has provided a significant amount of undisputed evidence to support his claim that the Landlord demolished the rental unit in September 2020. Firstly, I note that September 2020 falls within the six-month time period after the effective end date of the tenancy that the Landlord was required to use the rental unit for the stated purpose. Secondly, I agree that permits and documentation required for authorization to demolish a property would take months of planning at the very least, and the Tenant's evidence of the WorkSafeBC document of August 15, 2020 demonstrates that the Landlord had plans to demolish the rental unit well before the six-month time frame had elapsed.

When reviewing the totality of the undisputed evidence before me, I am satisfied on a balance of probabilities that the Landlord did not use the rental unit for the stated purpose within a reasonable period of time after the effective date of the Notice, for at least six months. As the Landlord did not occupy the rental unit for at least six months after the effective date of the Notice, I am satisfied that the Landlord failed to meet any of the requirements to use the rental unit for the stated purpose as per the *Act*.

As there have been no unforeseen or extenuating circumstances that prevented the Landlord from using the rental unit for the stated purpose within a reasonable period of time after the effective date of the Notice, for at least six months, I am satisfied that the Tenant has substantiated his claim that he is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$24,000.00**.

As the Tenant was successful in this claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

12 months' compensation	\$24,000.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$24,100.00

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$24,100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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: December 8, 2020

Residential Tenancy Branch