



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

On August 31, 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”).

The Tenant attended the hearing with D.D. attending as an advocate for the Tenant. The Landlord did not make an appearance at any point during the 39-minute teleconference hearing. All parties in attendance provided a solemn affirmation.

D.D. advised that the Notice of Hearing and evidence package was served, by registered mail on September 3, 2020, to the Landlord’s address listed on the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) and the tenancy agreement. She also indicated that a copy of this same package was served to the dispute address by registered mail on the same day (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 and evidence package five days after it was mailed.

Furthermore, as this evidence was served pursuant to the timeframe requirements of Rule 3.14 of the Rules of Procedure, I am satisfied that the Landlord was sufficiently served with the Tenant’s evidence. As such, 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?

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.

The Tenant advised that the most current tenancy started on May 1, 2016 and the tenancy ended when the Tenant gave up vacant possession of the rental unit on January 15, 2019, due to being served the Notice. Rent was established at \$1,500.00 per month and was due on the first day of each month. A security deposit of \$750.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence, for consideration.

She stated that the Notice was served to an adult at the rental unit on October 12, 2018. The reason that was checked off on the Notice was that “The 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 effective end date of the tenancy was noted as December 31, 2018 on the Notice. A copy of this Notice was submitted as documentary evidence, for consideration.

D.D. referred to the documentary evidence submitted, and she cited a document dated November 19, 2018 that was composed by the Landlord. This document explained why the Landlord served the Notice and why she needed the rental unit for her own use. This document was used by the Landlord for a previous Dispute Resolution hearing (the relevant file number is listed on the first page of this Decision). In this letter, the Landlord indicated that she would be getting married on February 2, 2019 and that she would be moving into the rental unit to occupy as her future home. The rental unit was situated in a more convenient location for her and her partner. Consequently, the Notice was served, and an Order of Possession was granted to the Landlord effective for December 31, 2018, at 1:00 P.M.

She then cited two letters composed by two neighbours, dated January 26, 2020 and August 6, 2020. Both of these neighbours live near the rental unit and can clearly see the rental unit. Their letters corroborated that the Landlord has not moved in or occupied

the rental unit since the tenancy ended. In addition, D.D. referenced documentary evidence of three pictures of mail that was addressed to the Landlord, but these packages were not claimed by her. These packages were dated July 12, 2019, October 17, 2019, and January 31, 2020. She submitted that as these packages were not claimed, this supports the Tenant's position that the Landlord has never moved into the rental unit.

The Tenant advised that she would occasionally drive by the rental unit, and on one occasion in mid-June 2019, she looked in the rental unit and it was empty. There were no lights on, and it was devoid of any sign of occupation. The rental unit was becoming derelict and there was no yard maintenance done. She did not submit any of these pictures as documentary evidence.

Pursuant to Section 51(2) of the *Act*, the Tenant is seeking compensation in the amount equivalent to 12 months' rent (**\$18,000.00**) because 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.

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 served on October 12, 2018 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 states the following:

Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy to move into the rental unit if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

Furthermore, this Policy Guideline 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).”

Moreover, 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* by using 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 corroborate her testimony and to support her 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 other undisputed evidence to support this claim that the Landlord, or close family member, did not occupy the rental unit at any time as described by Policy Guideline # 2A.

When reviewing the totality of the undisputed evidence and testimony 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 her claim that she is entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **\$18,000.00**.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$18,000.00** 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 11, 2020

Residential Tenancy Branch