



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RPP, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to return the tenant's personal property, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords (male and female), the landlords' agent, the tenant, and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 58 minutes.

The landlords' agent confirmed that he had permission to represent the two landlords at this hearing. The tenant confirmed that his agent had permission to represent him at this hearing, but she did not testify.

The landlords' agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application and the tenant was duly served with the landlords' evidence.

Both parties verbally confirmed that they were ready to proceed with the hearing and they had no objections.

During the hearing, the tenant did not testify about his claim for the return of his personal property. Accordingly, this portion of the tenant's application is dismissed without leave to reapply.

Preliminary Issue – Jurisdiction

Section 58(2)(a) of the *Act* states the following:

58 (2) Except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless
(a) the claim is for an amount that is more than the monetary limit for claims under the Small Claims Act,

Residential Tenancy Policy Guideline 27 states the following, in part:

Small Claims Limit

Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently \$35,000.

....

If the claim is for compensation under section 51(2) or 51.3 of the RTA, or section 44(2) or 44.1 of the MHPTA, the director will accept jurisdiction if the claim is for an amount over the small claims limit. These claims are not claims for damage or loss and the amount claimed is determined by a formula embedded in the statute. Arbitrators have no authority to alter this amount, and mitigation is not a consideration. They are not usually complex...

During the hearing, I informed the tenant that his claim regarding compensation of \$55,532.00 for illegal rent increases was not within the jurisdiction of the Residential Tenancy Branch ("RTB"). As per section 58(2)(a) of the *Act* and Residential Tenancy Policy Guideline 27 above, I notified the tenant that this claim exceeded the RTB monetary jurisdiction of \$35,000.00. I informed him that he could pursue this claim at the Supreme Court of British Columbia, if he wished to do so. The tenant confirmed his understanding of same.

During the hearing, I informed both parties that I had jurisdiction to deal with the tenant's application for 12 months' rent compensation under section 51(2) of the *Act* for \$48,600.00. Although this amount exceeds the small claims limit of \$35,000.00,

Residential Tenancy Policy Guideline 27 states above that the RTB has jurisdiction to deal with the matter if it relates to compensation under section 51(2) of the *Act*.

Section 60(3) of the *Act* states the following:

If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

During the hearing, I informed both parties that I had jurisdiction to deal with the tenant's current application, which was filed on September 4, 2020, even though it was outside the two-year limitation period under section 60(1) of the *Act*, since this tenancy ended on June 1, 2018.

I notified them that since the tenant made this current application on September 4, 2020, prior to the last RTB hearing date of September 15, 2020, I was able to hear it under section 60(3) of the *Act*, as noted above.

The previous hearing on September 15, 2020 dealt with both parties' applications, one of which was filed within the two-year limitation period on May 12, 2020. Both parties confirmed that they attended the previous hearing on September 15, 2020, after which a decision, dated September 16, 2020, was issued by a different Arbitrator. The file numbers for the previous hearing appear on the front page of this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) of the *Act*?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2011 and ended on June 1, 2018. A written tenancy agreement was signed by both parties. Monthly rent of \$4,050.00 was payable on the first day of each month.

Both parties agreed that the tenant vacated the rental unit pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property, dated March 13, 2018 ("2 Month Notice"). Both parties agreed that the notice had an effective move-out date of May 13, 2018. A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the reason indicated on the notice was:

- *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 tenant seeks compensation under section 51(2) of the Act for 12 months' rent compensation of \$4,050.00, totaling \$48,600.00, plus the \$100.00 filing fee. The landlords dispute the tenant's entire application.

The tenant stated the following facts. The tenant does not dispute the fact that the landlords used the rental unit for the purpose stated in the 2 Month Notice and that they moved into the rental unit. He disputes that the landlords are owners of the rental unit, as he believes they informally and illegally sold the rental unit to a new owner and they were acting as agents for the new owners. The female landlord admitted this in her emails to the tenant's mother, where they talk about plans to sell the rental unit. The landlords did not have the ability to issue the 2 Month Notice to the tenant in the first place because they were not owners of the rental unit. The landlords have not provided any tax forms, mortgage documents or land title ownership documents to show that they own the rental unit. The tenant agreed that he did not have or provide any documentary evidence of a transfer in ownership, claiming that the documents did not exist, since the landlords told him verbally and they transferred the property informally.

The landlords' agent stated the following facts. The two landlords moved into the rental unit on June 1, 2018 and continue to live there as of the date of this hearing on January 11, 2021. The two landlords are joint owners of the rental unit, both during the tenancy and after the tenancy ended. This ownership has not changed. There were discussions between the two landlords, about the female landlord potentially buying the male landlord's share of the rental unit, but this sale never occurred. The emails with the tenant's mother involved an English-language barrier on the part of the female landlord.

Analysis

Section 49(3) of the *Act* states that landlords may end a tenancy in respect of a rental unit where the landlords or a close family member intend in good faith to occupy the rental unit.

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the landlords do not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

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.

I make the following findings, on a balance of probabilities, based on the testimony and evidence of both parties.

The tenant vacated the rental unit on June 1, 2018, pursuant to the 2 Month Notice. I find that the two landlords moved into the rental unit on June 1, 2018, after the tenancy ended, and continue to live there, as of the date of this hearing on January 11, 2021. This evidence was undisputed at the hearing.

I find that the two landlords are current owners of the rental unit, and they were owners both during the tenancy and after the tenancy ended. I find that this ownership has not changed. I find that as the owners and landlords for the rental unit, they were entitled to issue the 2 Month Notice to the tenant. The tenant agreed that he did not dispute the 2 Month Notice at the RTB.

I find that the tenant did not provide sufficient evidence that the landlords were not the owners of the rental unit during the tenancy or after the tenancy ended. I do not find emails involving discussions of a potential sale to be proof that the landlords sold the

rental unit to new owners. I accept the affirmed testimony of the landlords' agent that there was an English-language barrier in the emails, that there were discussions regarding a potential sale of the rental unit only between the two current owners, and that there was no actual sale of the rental unit.

Therefore, I find that the landlords used the rental unit for the reason indicated in the 2 Month Notice. I find that both landlords moved into the rental unit and occupied it for more than six months. I dismiss the tenant's application for 12 months' rent compensation of \$48,600.00, without leave to reapply.

As the tenant was unsuccessful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenant's application for an order requiring the landlords to return the tenant's personal property, a monetary order for \$48,600.00 for 12 months' rent compensation under section 51(2) of the *Act*, and to recover the \$100.00 filing fee, are all dismissed without leave to reapply.

I decline jurisdiction over the tenant's application for a monetary order of \$55,532.00 for illegal rent increases and I make no determination on the merits of this portion of the tenant's application. Nothing in my decision prevents the tenant from advancing this claim for \$55,532.00 before a Court of competent jurisdiction.

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: January 11, 2021

Residential Tenancy Branch