



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kindercenters Childcare Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on February 1, 2021. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51; and,
- recovery of the filing fee.

The Landlord and the Tenant both attended the hearing. The Landlord confirmed receipt of the Tenant's application, Notice of Hearing, and evidence. The Landlord confirmed he was able to open the video files and photo on the USB stick provided by the Tenants. The Tenant confirmed that she received the Landlord's evidence package. I find both parties sufficiently served each other with their evidence.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under section 51 of the Act?

Background and Evidence

The Tenants stated that monthly rent was \$2,200.00 per month, as per the tenancy agreement provided into evidence. The Tenants stated they received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on or around September 17, 2019. The Tenant provided a copy of the Notice into evidence, and it indicates the following grounds as a reason to end the tenancy:

- 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 Landlord 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 Landlord confirmed that this property is owned by a family corporation, and is not owned by one individual. The Landlord explained that he and his wife are sole shareholders of the corporation which owns this particular property (laneway house and main house). The Landlord explained that under this tenancy agreement, the Tenants rented the main house, while the Landlord owned and operated a licenced daycare in the rear of the property in a carriage house.

The Tenants moved into the rental unit sometime around August 1, 2018, and rented the house on a month-to-month basis. The parties agreed that the Landlord was allowed to keep one of the 3 bedrooms in the lower floor of the rental house as office storage (a few boxes and a table). The Tenants occupied the remainder of the house. The Tenants stated that the Landlord never used the space, or entered to their knowledge, and only kept the lower bedroom as a long term storage locker. The Landlord did dispute that they rarely accessed this storage room.

The Landlord explained that he is under a lot of multijurisdictional pressure from the health authority, the municipality, and the Residential Tenancy Act. The Landlord stated that he has been trying to balance the requirements placed on him to keep his licenced daycare running and in compliance, while also being able to rent out the house, and comply with the tenancy laws.

The Tenants explained that they were expecting a baby, and were shopping around for different places to live in the summer of 2019. The Tenants stated that when one of their

reference checks for a prospective tenancy called the Landlord, he was surprised and concerned. The Landlord explained that he was caught off guard by the rental reference check call he received. The Landlord noted that there are complex requirements that he needs to follow to maintain his business and daycare certification (criminal record checks of occupants etc), which makes it hard to find a suitable replacement tenant in a timely manner. The Landlord ended up issuing the Notice to the Tenants, in part, because he wanted to have some certainty around when the tenancy would end and to maintain the operating/business licencing requirements for the daycare.

The owner of the company stated that he and his wife live in another part of the Lower Mainland with their son and neither they, nor a close family, ever planned on moving into the house, next to the daycare. The Landlord explained that after the Tenants moved out at the end of November 2019, he rented the house out to the manager of his daycare for \$2,000.00 per month. A new tenancy agreement was signed, and the Landlord's daycare manager continues to occupy the rental property. The Landlord stated that there is also another employee of the company who now lives with the manager.

The Landlord explained that it was never his intention to make money off of this situation, and he has only tried to remain compliant with all the different rules. The Landlord felt the only solution was for him to have an employee live in the house.

The Tenants are seeking 12 month's compensation because the Landlord didn't accomplish the stated purpose on the Notice.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, the Tenants are seeking 12 month's compensation, pursuant to section 51 of the Act, (12 x \$2,200.00) because the Landlord did not use the rental unit in the manner they indicated on the Notice.

First, I turn to the Notice itself, which was issued under two grounds. I note that the Notice itself indicates that the Landlord should select "the box" that applies, which I infer means that the Landlord should not select multiple boxes. In this case, the Landlord indicated the rental unit is not owned by an individual, but rather by a corporation. As such, I find the most applicable and appropriate ground to select in this case would be the second ground the Landlord selected, which is the following ground:

- The Landlord 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 Section 68 of the Act authorizes me to amend a Notice when it is reasonable to do so, and when it is not in line with the Act. In this case, the Landlord is a corporation, so the first ground should not have been selected. The intention of this type of Notice is to only select one ground. I hereby amend the Notice to remove the first ground selected. My analysis will focus on the second ground selected by the Landlord.

I turn to the following portion of the Act:

Tenant's compensation: section 49 notice

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.*

I also note the following portions of *Residential Policy Guideline #2A - Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member*:

“Family corporation” means a corporation in which all the voting shares are owned by one individual, or one individual plus one or more of that individual's brother, sister or close family members.

[...]

C. OCCUPYING THE RENTAL UNIT

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see also: Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). 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.

The Landlord acknowledged that he and his wife are the sole owners and shareholders of the corporation which owns this rental property. I accept that the company is a daycare centric company, which also operates a licenced daycare in the carriage house on the rear of the property. The owner acknowledged that neither he, nor his wife, nor any other family member have moved into the rental unit since the Tenants vacated in November 2019. In fact, the owner specified that his manager, and another employee live there.

Even if the Landlord has maintained a storage room in the basement of the house, throughout this entire time, I do not find this equates to occupation of the house, for the purposes of this Act. For the purposes of this part of the Act, occupation should be for residential purpose. Also, it appears that even after this tenancy ended, the Landlord continued to use the rental unit/house in a primarily residential manner, when it was rented to the manager of the daycare.

I note that section 49(4) of the Act allows the Landlord to end a tenancy 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. In this case, it does not appear any voting shareholders, or close family members of those shareholders occupied the premises for residential purposes. I find this is a violation of the Act, which has the potential to trigger

12 month's compensation under section 51(2) of the Act. However, the issue now becomes whether or not the Landlords have sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenants compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

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*

I note the Landlords (owners) had numerous rules and regulations to follow to ensure their daycare business, which owns the house, remained in compliance with the local health authority and the municipality. However, I do not find there is sufficient evidence to demonstrate that their circumstances were extenuating, such that they ought to be excused from accomplishing the stated purpose. It appears the Landlord's primary objective was to remain in compliance with their business and licencing requirements for the daycare (municipality/health authority.) However, by issuing this Notice, the Landlord's inserted further complexities relating to the Residential Tenancy Act. The Landlord should never have issued the Notice under the grounds they selected if they had no intention of moving in, or having a close family member move in, as that is the explicit requirement of this part of the Act. I find the dilemma the Landlord ended up in was largely a result of how they chose to end the tenancy, and remain in compliance with other branches of government.

I award the Tenants \$26,400.00, pursuant to section 51(2) of the Act, which is 12 times monthly rent of \$2,200.00.

Conclusion

I grant the Tenants a monetary order in the amount of \$26,400.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: February 01, 2021

Residential Tenancy Branch