



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with a tenant's application for compensation payable where a landlord does not use the rental unit for the purpose stated on a *Two Month's Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice"), as provided under section 51(2) of the Act.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed that the tenant sent his proceeding package and evidence to the respondents via registered mail and the respondents received it. Accordingly, the tenant's materials were admitted into evidence.

I also confirmed that the landlord had not submitted or served any evidence or materials before the hearing and the landlord intended to present his position and evidence orally during the hearing.

Preliminary Matters – Identity of landlord

In filing this Application for Dispute Resolution, the tenant had named two landlords, including an individual referred to by initials JL. JL appeared at the hearing. JL and the landlord were of the position that JL was not a landlord or landlord's agent with respect to the tenancy.

I noted that from the evidence before me, the landlord did have a different individual acting as the landlord's agent during the tenancy, an individual referred to by initials DLB. DLB was named on the tenancy agreement, signed the 2 Month Notice, and

corresponded to the tenant during the tenancy. I asked the tenant to demonstrate that JL was also a landlord or landlord's agent.

The tenant testified that JL had issued the security deposit refund cheque to him and JL was the landlord's real estate agent of record.

In response, the landlord and JL submitted that JL issued the cheque for the security deposit refund cheque as a courtesy or convenience to the landlord and DLB. The landlord stated he did not have a Canadian bank account and DLB did not have the funds to issue a refund cheque to the tenant so the landlord asked JL to provide DLB the funds. JL testified that he contacted DLB regarding the refund and DLB instructed JL to issue the cheque directly to the tenant instead of her. JL testified that he left the cheque with DLB to send to the tenant.

JL and the landlord were in agreement that JL was the listing realtor for the sale of the rental unit after the tenancy ended.

Section 1 of the *Residential Tenancy Act* ("the Act") provides the definition of "landlord" for purposes of the Act, as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent, or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

[My emphasis underlined]

In keeping with the definition of “landlord”, to be considered a landlord under the Act, a party must be acting on behalf of the owner and either permit occupation of the rental unit to the tenant under a tenancy agreement; or, exercise the powers or duties under the Act or tenancy agreement on behalf of the landlord.

In this case, JL was acting as agent for the owner with respect to listing the property for sale; however, JL did not permit the tenant occupation of the rental unit. Rather, that appears to have been done by DLB. It also appears to me that the powers and duties of the landlord were carried out by DLB during the tenancy. JL did undeniably issue a security deposit refund cheque to the tenant; however, I heard that was done as a matter of convenience for the landlord and DLB and I am unsatisfied that this action makes JL a landlord to the tenant for purposes of the Act. While JL was admittedly the listing real estate agent for purposes of selling the rental unit, an agent for that purpose does not make JL an agent for the landlord for purposes of the Act.

In light of the above, I informed the parties that I was unsatisfied that JL is/was a landlord to the tenant for purposes of the Act and I would exclude him as a named landlord. I have amended the style of cause to exclude JL as a named party.

JL was asked to leave the teleconference call but remain available in the event he was called to testify as a witness, and he did leave the conference call. Neither party called JL to testify during the remainder of the hearing.

Issue(s) to be Decided

1. Did the tenant establish an entitlement to compensation payable where a landlord does not use the rental unit for the purpose stated on a *Two Month's Notice to End Tenancy for Landlord's Use of Property* (“2 Month Notice”), as provided under section 51(2) of the Act?
2. Did the landlord establish that an extenuating circumstance prevented the landlord from using the rental unit for the stated purpose on the 2 Month Notice?
3. Award of the filing fee.

Background and Evidence

The tenancy started on October 1, 2015 and the tenant paid a security deposit of \$937.50. The parties executed a new tenancy agreement every year with the most recent tenancy agreement starting on October 1, 2019 for a fixed term set to expire on September 30, 2020 (“herein referred to as the tenancy agreement”). The tenant was

required to pay rent of \$2000.00 on the first day of every month under the most recent tenancy agreement.

The landlord's agent DLB signed a *Two Month's Notice to End Tenancy for Landlord's Use of Property* on July 24, 2020 and sent it to the tenant via registered mail. The 2 Month Notice has a stated effective date of September 30, 2020 and the stated reason for ending the tenancy was as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="checked" type="checkbox"/>	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).
Please indicate which close family member will occupy the unit.	
<input checked="checked" type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse

The tenant vacated the rental unit and the tenancy ended on September 30, 2020 and withheld rent for September 2020 as compensation payable for receiving the 2 Month Notice, as provided under section 51(1) of the Act.

The tenant submitted that after he moved out the rental unit remained vacant and then on November 9, 2020 the rental unit was listed for sale and it sold effective December 28, 2020. The landlord did not refute any of these submissions.

Landlord's position

The landlord submitted, through his representative, that in April 2020 the landlord had decided to sell the rental unit and had informed the tenant of such. However, in July 2020 the landlord decided to move into the rental unit because he was residing in California, an area particularly hard hit by the Covid-19 pandemic, so the landlord thought it would be safer for him to reside in Canada, in the rental unit, and the landlord's agent was instructed his agent to issue the 2 Month Notice.

The landlord submitted that after the tenant vacated the rental unit the landlord realized he would not have medical insurance in Canada due to pre-existing medical conditions, and he did not have a doctor in Canada, so he decided not to move to the rental unit.

The landlord submitted that in late October 2020 or early November 2020 the discovery of a vaccine was announced so he decided to stay at his home in California and to sell

the rental unit. The rental unit was listed for sale shortly thereafter and it did sell at the end of December 2020.

The landlord's representative argued that the landlord is aware of the tenancy laws in British Columbia and they were fine with having a rental unit tenanted while they listed a property for sale, as they had done before. The landlord did not have a motivation to end the tenancy for any reason other than his intention to move into it but the pandemic is to blame for the change in circumstances. The landlord did not have any issue with the tenant as evidenced by the landlord not raising his rent.

Tenant's response

The tenant responded that the landlord's intentions were changing and unclear. Prior to receiving the 2 Month Notice he was informed that the landlord wanted to sell the unit, then he was advised that the landlord would be moving into the rental unit but then the landlord ended up selling the unit shortly after the tenancy ended. The tenant also testified that JL had told the tenant that the unit would be easier to sell if it was clean for the showings. The tenant was of the position the landlord intended to sell the unit; however, if it was pre-existing medical conditions, the inability to get medical insurance or a doctor, and the pandemic that prevented the landlord from moving into the rental unit the landlord did not provide any corroborating evidence of such.

Landlord's rebuttal

The landlord was of the position that the cost to clean the rental unit for showings and the ease of showing a vacant unit were not part of the landlord's decision to end the tenancy. Rather, the costs to clean would have been less expensive than the loss of rent the landlord incurred from ending the tenancy and any applicable vacancy tax. The landlord maintained that it was the pandemic that was the primary factor in not moving into the rental unit.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

The tenancy ended pursuant to issuance of a *Two Month's Notice to End tenancy for Landlord's Use of Property* under section 49 of the Act and the reason for ending the

tenancy, as stated on the 2 Month Notice, was so that the landlord or the landlord's spouse may occupy the rental unit after the tenancy ends.

Section 51 of the Act provides for compensation payable to a tenant where the tenancy has ended under section 49 of the Act. In this case, the tenant received compensation under section 51(1) and is seeking the additional compensation payable under section 51(2) of the Act.

Below, I have reproduced sections 51(2) and (3):

(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.

It was also undisputed that after the tenancy ended the rental unit remained vacant and on November 9, 2020 it was listed for sale and the rental unit was sold effective December 28, 2020. Accordingly, I find it is undeniable that the landlord did not use the rental unit for the purpose stated on the 2 Month Notice starting within a reasonable amount of time after the tenancy ended and for a period of at least six months.

The landlord provided reasons for not using the rental unit for the stated purpose during the hearing. While the landlord did not specifically point to extenuating circumstances, I proceed to consider the whether the landlord may be excused from paying the tenant the amount required under section 51(2) due to extenuating circumstances, as provided under section 51(3).

The Act does not define “extenuating” or “extenuating circumstances” and I turn to the ordinary meaning which includes: a situation or condition that provides an excuse for an action; tending to lessen the real or apparent seriousness of something (such as a crime, offense, or fault); providing a partial justification or excuse for something.

Residential Tenancy Branch Policy Guideline 50. *Compensation for Ending a Tenancy* provides information and guidelines with respect to extenuating circumstances, which I have reproduced below:

E. 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

In the matter before me, the landlord pointed to the pandemic as being the reason for wanting to move into the rental unit but decided not to move into the rental unit shortly after the tenancy ended due to his pre-existing medical conditions and his determination that he could not get medical insurance or a doctor as being the reasons he did not move to reside in the rental unit shortly after the tenancy ended. The landlord did not

present any corroborating evidence of pre-existing medical conditions or inability to get medical insurance or a doctor in Canada. However, I would expect that these considerations would have been explored before issuing the 2 Month Notice or at the least before the tenancy ended. The landlord did not offer any explanation as to why he did not consider or determine these factors before issuing the 2 Month Notice to the tenant or before the tenancy ended. Rather, I find it an aggravating factor that the landlord only looked into the ability to get medical insurance and a doctor after the tenant had vacated the rental unit as it demonstrates, to me, a lack of consideration for ending the tenancy without exercising due diligence and reasonable planning.

The landlord pointed to the pandemic as a reason for deciding to move into the rental unit when the 2 Month Notice was issued and the discovery of a vaccine when he decided to sell the unit; however, the landlord did not provide a reason why he would not be able to get the vaccine if he occupied the rental unit.

Considering the landlord had previously expressed an intention to sell the unit, the apparent lack of any research into obtaining medical insurance or a doctor prior to issuing the 2 Month Notice or the end of the tenancy, the lack of corroborating evidence to demonstrate extenuating circumstances prevented him from occupying the rental unit, and the decision to sell the rental unit shortly after the tenancy ended, it is my opinion that the extenuating circumstances do not excuse the landlord from compensating the tenant the compensation payable under section 51(2). Therefore, I grant the tenant's request for compensation in the equivalent of 12 month's rent, or \$24000.00.

I further award the tenant recovery of the \$100.00 filing fee he paid for this Application for Dispute Resolution.

In keeping with all of the above, I provide the tenant with a Monetary Order in the amount of \$24100.00 to serve upon the landlord.

Conclusion

The tenant is provided a Monetary Order in the sum of \$24100.00 to serve and enforce upon the landlord.

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 25, 2021

Residential Tenancy Branch