



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on December 4, 2020, wherein the Tenant sought monetary compensation from the Landlord pursuant to section 51(2) of the *Residential Tenancy Act* (the "Act") and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on March 9, 2021. The Tenant called into the hearing as did the Landlord's Property Manager, D.R. Both were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Preliminary Matter—Evidence

The Landlord failed to provide any documentary evidence in response to the Tenant's claim. The Property Manager stated that he filed evidence in a counterclaim. There was no such counterclaim before me.

The parties also advised they had a further hearing on March 29, 2021 (the file numbers for those matters are included on the unpublished cover page of this my Decision). A review of branch records confirms the Landlord filed evidence in respect of the claims set for hearing on March 29, 2021 on March 4, 2021, five days prior to this hearing. That evidence was not filed in respect of this Application; as such that evidence was inadmissible in the hearing before me.

No other issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here;

further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord pursuant to section 51(2) of the *Act*?
2. Should the Tenants recover the filing fee?

Background and Evidence

In support of their claim, the Tenant, S.M., testified as follows. He stated that this tenancy began April 1, 2019. Monthly rent was \$4,800.00. He also paid a security deposit of \$2,400.00, a pet damage deposit of \$2,400.00 and a fob deposit in the amount \$400.00. These amounts were confirmed in the residential tenancy agreement provided in evidence before me, however the copy of the agreement provided by the Tenant was not signed by either party.

The Tenant stated that he met with the Landlord's former property managers, P.P.M., and they signed the tenancy agreement on behalf of the owner/Landlord Y.W. The Tenant confirmed that he never met the owner. The signed tenancy agreement was not in evidence before me although the Tenant testified that the Landlord provided a copy of the signed agreement in the matter which was to be heard on March 29, 2021.

The Tenant testified that he paid his first month's rent of \$4,800.00. He further stated that when he first moved into the rental unit, he had a discussion with the Landlord's property managers about the condition of the property. The Tenant stated that as a result of these discussions the Landlord's property managers agreed that he would pay rent and provide services which were deducted from his rent payments as and when performed.

The Tenant testified that they received the 2 Month Notice to End Tenancy for Landlord's Use on September 8, 2020 (the "Notice"). The effective date of the Notice was November 30, 2020; however, the Tenants exercised their option, pursuant to section 50 of the *Act* and moved out on October 23, 2020. The Tenant confirmed that they received a free months rent, namely October 2020.

The Tenant provided evidence to show that the rental property was listed for sale as of November 10, 2020. The Tenant stated that he was informed the property had been sold.

In response to the Tenants' claims, the Landlord's Property Manager, D.R., testified as follows. He stated that his company took over management of the property in May of 2019. He confirmed that he signed the Notice as agent for the Landlord.

D.R. confirmed that the tenancy agreement was signed by both the Tenant and the Landlord's former property manager. He further confirmed the monthly rent was \$4,800.00. He confirmed that he provided a copy of the signed agreement in evidence for the other two files relating to the March 29, 2021 hearing.

D.R. stated that the Landlord's cousins moved into the rental property during the last week of October and first week of November. D.R. stated that he called the Residential Tenancy Branch office about what to do and they told him that as long as he didn't sell the property within six months, they could have family move into the unit.

D.R. further confirmed that the property was listed for sale on November 10, 2020. He testified that the property sold, and the closing date was March 11, 2021.

D.R. stated that there are three people on title to the property, Y.W., who is the Landlord in the current proceedings, her husband, L.Q. and X.S. who is related to Y.W.

At the conclusion of his testimony, D.R. stated that they do not believe the tenancy agreement is valid, as the Landlord, Y.W., entered into this agreement without the other two owner's consent. D.R. further stated that this is why one of the previous property managers, P.P.M., were let go. D.R. confirmed that his original involvement was that of the real estate agent. He confirmed that the rental home was sold and at that time they realized a tenancy existed. D.R. stated that he negotiated with the Tenants to ensure the sale would continue. D.R. stated that the Tenants then failed to pay rent as agreed and eventually the owners decided to move into the property.

Analysis

The Tenants seek monetary compensation pursuant to sections 49 and 51(2) of the *Act* which reads as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 4 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit 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.

(5) A landlord may end a tenancy in respect of a rental unit 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.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the [Strata Property Act](#);

(d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

Based on the above, the testimony and evidence before me, and on a balance of probabilities, I find as follows.

I find the parties entered into a written tenancy agreement whereby the Tenant agreed to rent the rental unit for a monthly payment of \$4,800.00.

At the conclusion of the hearing, the Landlord's agent submitted that the other owners believe this tenancy agreement is not valid because it was only signed by one owner. I am not persuaded by this argument.

Section 1 of the *Act* defines landlord 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;

There is no requirement in section 1 that *all* registered owners must sign a tenancy agreement for the agreement to be valid. The undisputed evidence before me is that Y.H. is an owner of the rental property and instructed her agent to enter into this agreement as her representative. Whether she had the consent of the other owners is not a matter between the Landlord and the Tenant, but a matter of dispute between the owners. In any event, the evidence confirms the tenancy continued for some 17 months

following the signing of the tenancy agreement. I therefore find this tenancy agreement to be valid for the purposes of the application before me.

The parties agreed the tenant was obligated to pay monthly rent of \$4,800.00 per month pursuant to the residential tenancy agreement. While a signed copy was not provided in evidence before me, I was provided an unsigned copy. The parties further agreed that in other proceedings before the Residential Tenancy Branch a signed agreement was provided and which confirmed the contents of the unsigned agreement before me. While I did not review the signed agreement, I accept the parties' testimony that the agreement provided to me was later signed by the parties. I therefore find the monthly rent is \$4,800.00 pursuant to the tenancy agreement.

The Landlord's Agent testified that he took over management of the rental property for the owners in May of 2019. I accept his testimony in this respect and find he was authorized by the Landlord to issue the Notice.

I find the Landlord's Agent issued the Notice on September 8, 2020. The reasons cited on the Notice were 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 Notice further indicated that it would be occupied by the Landlord or the Landlord's spouse.

The effective date of the Notice was November 30, 2020. While the Tenants exercised their option to end the tenancy early pursuant to section 50 of the *Act*, this does not alter the effective date of the Notice.

The Landlord's agent testified that the Landlord's cousins moved into the rental unit. The Landlord's agent submitted that the Landlord's cousins were in fact the parents of one of the owners, such that they meet the definition of "close family member" for the purposes of section 49. Even in the event this argument was accepted, I find it does not affect the Tenants' entitlement pursuant to section 51(2) for the following reasons.

The Landlord's agent testified that the property was listed for sale on November 10, 2020 and sold with a closing date of March 11, 2021. As March 11, 2021 is within six months of the effective date of the Notice, I find the rental unit "was not used for the stated purpose for at least 6 months' duration" as required by section 51(2)(b) of the *Act*.

Residential Tenancy Branch Policy Guideline 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member provides the following additional guidance:

6-month occupancy requirement

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).

The undisputed evidence before me is that the property was sold within six months of the effective date of the Notice. While a Landlord may end a tenancy when a property sells pursuant to section 49(5), the Landlord in this case issued the Notice pursuant to section 49(3) for Landlord's *occupation of the unit*. The undisputed evidence before me confirms the property was sold and not occupied for the required six months.

I therefore find, pursuant to section 51(2) of the *Act*, that the Tenants are entitled to monetary compensation equivalent to 12 months of the monthly rent payable under the tenancy agreement.

Section 51(3) of the *Act* provides that a landlord may be excused from paying this amount if extenuating circumstances prevented the landlord from accomplishing the stated purpose within a reasonable period of time after the effective date of the Notice or using the rental unit for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice. The Landlord's agent did not make any submissions with respect to such extenuating circumstances. I therefore find no basis to excuse the Landlord from paying the compensation set out in section 51(2).

As such, the Tenants are entitled to the sum **\$57,600.00** pursuant to section 51(2).

I exercise my discretion and decline the Tenants' request for recovery of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The Tenants' application for monetary compensation pursuant to section 51(2) is granted. Pursuant to section 67 of the *Act*, the Tenants are entitled to a Monetary Order in the amount of **\$57,600.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: April 1, 2021

Residential Tenancy Branch