



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 result of a Tenant's Application for Dispute Resolution, filed on December 7, 2020, wherein the Tenant sought monetary compensation from the Landlord in the amount of \$2,072.00 including compensation pursuant to sections 49, 50 and 51 of the *Residential Tenancy Act*, and recover of the filing fee.

The hearing of the Tenant's Application was scheduled for 1:30 p.m. on March 29, 2021. Both parties called into the hearing. The Landlord was also assisted by an interpreter, J.S. Both parties were affirmed and provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord's interpreter was also affirmed to accurately translate the Landlord's testimony.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No 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. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee.

Background and Evidence

This tenancy began July 15, 2016. The Tenant paid \$3,844.00 in monthly rent and a \$1,922.00 security deposit.

The Tenant received a 2 Month Notice to End Tenancy for Landlord's Use dated August 20, 2020. The effective date of the Notice was October 31, 2020. The Tenant gave notice to end her tenancy early by sending a notice of early termination. The Tenant testified that she sent a registered letter to the Landlord's address as noted on the Notice. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. This document indicates that the package was signed for on October 2, 2020.

The Landlord claimed she did not receive the Tenant's letter. She denied that any family member signed for the document. She claimed she only received the Tenant's letter when the Tenant sent an email on October 15, 2020. The Landlord testified that she was unaware the Tenant intended to end her tenancy early

Analysis

The Tenant seeks compensation pursuant to sections 49, 50 and 51 of the *Act* which read 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 may end tenancy early following notice under certain sections

- 50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]*, the tenant may end the tenancy early by
- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
 - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

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.

In this case, the Tenant received the Notice on August 20, 2020. The effective date of the Notice was October 31, 2020.

As noted about, a tenant who receives a notice to end tenancy pursuant to section 49 of the *Act* is permitted to end their tenancy earlier than the effective date of the notice, provided they give the landlord 10 days notice of their intention to end the tenancy early. I find that the Tenant sent the Landlord written notice pursuant to section 50 of the *Act*, that she intended to end her tenancy as of October 15, 2020. I accept her testimony and documentary evidence that she sent a letter to the Landlord on September 30, 2020, via registered mail, which pursuant to section 90 of the *Act*, is deemed served 5

days later, or October 5, 2020. Accordingly, the effective date of the Tenant's notice was October 15, 2020.

As such, and pursuant to section 51(1.2), the Tenant is entitled to a refund of half a months' rent in the amount of \$1,922.00. I therefore award her recovery of this sum.

Having been successful in her Application, the Tenant is also entitled, pursuant to section 72 of the *Act*, to recovery of the \$100.00 filing fee for a total award of **\$2,022.00**. In furtherance of this my award I grant the Tenant a Monetary Order in the amount of **\$2,022.00**. The Tenant must serve this Order on the Landlord and, in the event the Landlord does not pay, the Tenant may file and enforce the Order in the B.C. Provincial Court.

Conclusion

The Tenant's request for monetary compensation from the Landlord is granted. She is entitled to the sum of **\$2,022.00** representing compensation pursuant to sections 49, 50, 51 and 72 of the *Act*.

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 21, 2021

Residential Tenancy Branch