



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for a monetary order in the amount of \$43,200.00, for 12 months' compensation due to the landlords failing to comply with the reason stated on the 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 5, 2020 (2 Month Notice), and to recover the filing fee.

The tenants, the landlord and the daughter/translator for the landlord, KS (translator) attended the teleconference hearing. All participants were affirmed, the hearing process was explained, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

I have reviewed all oral, documentary and digital evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence related to the facts and issues in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence. Based on the above, I find the parties were sufficiently served according to the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of

Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issues to be Decided

- Are the tenants entitled to a monetary order for compensation in the amount of 12 times the monthly rent pursuant to section 51(2) of the Act?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 1, 2020 and stated that the tenancy would be ending as of January 31, 2021 due to the "The owner's family move back". The section of the Regulation is missing from the tenancy agreement. Monthly rent was \$3,600.00 per month.

The tenants were served with the 2 Month Notice on November 5, 2020. The effective vacancy date listed on the 2 Month Notice was January 31, 2021. The tenants testified that they vacated on January 30, 2021 while the translator stated that they vacated on January 31, 2021. The reason stated on the 2 Month Notice is:

"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.

The landlord or the landlord's spouse"

The tenants stated that within a couple weeks of vacating the rental unit, they saw the property listed for sale and that as of February 16, 2021 it has sold for \$1,620,000.00, which was over the asking price of \$1,599,900.00. The document submitted in evidence is from the BC Real Estate Board (BCREB) and confirmed the sale date as 2/16/2021 for \$1,620,000.00.

The translator stated that the reason for selling the property was that the landlord's mother (Mother) was diagnosed with Parkinson's Disease and that the landlord and the translator had to move back to China to care for the landlord's Mother. Submitted in evidence were translated documents dated in December 2020, which confirmed that a person by the name of LL, was diagnosed with Parkinson's Disease. The translator stated that the landlord and the translator did not move back to China until May 21, 2021, which was supported by a copy of an airline booking document submitted in evidence. The translator stated that the landlord did not move earlier as the closing date was in May 2021. The translator stated that the money was needed for taking care of the landlord's mother in China.

The translator stated that the tenants were offered to stay longer in the rental unit, which the tenants vehemently disputed and stated that no such offer was made by the landlord and that the tenants had to find a new rental unit after being served with the 2 Month Notice.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

12 times the monthly rent - Section 51(2) of the Act applies and states:

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.

[Emphasis added]

The landlord is attempting to rely on section 51(3) of the Act which states:

(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.

[Emphasis added]

Based on the evidence before me, I find the landlord has provided insufficient evidence of extenuating circumstances as the Parkinson's diagnosis was discovered in December 2020, which is before the January 31, 2021 effective vacancy date of the 2 Month Notice. Therefore, I find it would have been reasonable for the landlord to attempted to revoke the 2 Month Notice by way of a Mutual Agreement as the tenancy would have survived the sale of the property that I find was more likely than not planned by the landlord since the diagnosis in December 2020. However, the landlord failed to present any evidence that such an attempt was made. In addition, I find that by waiting until May 21, 2021, before leaving for China, that the landlord could have waited two more months until the end of July 2021, which would have been the six months required under section 51(2)(b) of the Act listed above. Furthermore, I find that the landlord provided no evidence of the costs associated with taking care of the landlord's mother in China in support of their need to sell the rental property.

Therefore, given the evidence before me, I find that the landlord did not have extenuating circumstances that prevented them from using the rental unit for at least 6 months from January 31, 2021, which was the effective vacancy date listed on the 2 Month Notice. Therefore, I find the tenants have met the burden of proof and are entitled to **\$43,200.00** in compensation from the landlord, comprised of twelve times the monthly rent of \$3,600.00 pursuant to section 51(2) of the Act.

As the tenants' application was fully successful, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I find the tenants have established a total monetary claim of **\$43,300.00** comprised of \$43,200.00, which is 12 times \$3,600.00 monthly rent, plus the \$100.00 filing fee.

Conclusion

The tenants' application is fully successful.

I find the landlord failed to use the rental unit for the stated purpose and instead, listed the property for sale and sold it for \$1,620,000.00 on February 16, 2021. I find the landlord has failed to prove extenuating circumstances that prevented them from complying with the reason listed on the 2 Month Notice.

The tenants are granted a monetary order pursuant to section 67 of the Act, in the amount of \$43,300.00 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord is reminded that they can be held liable for all enforcement costs under the Act.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 28, 2021

Residential Tenancy Branch