



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNETC, FFT**

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord SSP attended with his wife and agent MP (“the landlords”). The tenant attended. The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

Each party acknowledged receipt of the other’s materials. I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution. I find the landlords served the tenant with their evidence.

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. The parties had no questions about my direction pursuant to RTB Rule 6.11 and each confirmed that no recording was taking place.

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

During the hearing, I assisted the parties to discuss possible resolution of the dispute. However, the parties were unable to come to a meeting of the minds, and the hearing concluded.

Issue(s) to be Decided

Is the tenant entitled to the following?

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

This is an application by the tenant for monetary compensation in the amount of \$23,940.00. This represents 12 times the monthly rent of \$1,995.00. The tenant claimed reimbursement of the filing fee of \$100.00.

The tenant confirmed at the hearing that she withdrew claims for any other compensation.

A copy of the tenancy agreement was submitted. The parties agreed to the following information about the tenancy between them.

| ITEM | PARTICULARS |
|---|-----------------------|
| Beginning of tenancy | March 1, 2019 |
| Written tenancy agreement submitted | Yes |
| Rent monthly | \$1,995.00 |
| Two Month Notice Served | September 24, 2020 |
| Reason for Two Month Notice | Landlords' occupation |
| Copy Two Month Notice submitted | yes |
| Effective date of Notice and end of tenancy | November 30, 2020 |
| One month's rent compensation | yes |

The tenant explained that the unit was a house in poor condition. The tenant paid for some repairs and improvements. The female tenant, who attended the hearing, lived there with her husband who was in poor health. The tenant testified to complaints she made to the landlords during the tenancy about various deficiencies and repairs needed in the house which were not fixed.

The Two Month Notice was served September 24, 2020. A copy of the Notice was submitted which is in the standard RTB form., The reason cited for ending the tenancy is:

The rental unit will be occupied by the Landlord or the Landlord's close family member spouse or a close family member.

The Two Month Notice provides information for tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

The tenant accepted the Two Month Notice and moved out of the rental unit. The tenant described her problematic financial situation and the inconvenience of moving.

The landlords acknowledged that the Two Month Notice was issued because the landlord intended to occupy the unit. They also testified that instead of moving in, they advertised the unit for sale in mid-January 2021 and sold it soon afterwards. The landlords testified that neither the landlords nor a close family member occupied the unit from the time the tenant vacated until the unit was sold.

The landlords were provided an opportunity to make submissions on whether there were circumstances that prevented them from using the rental unit for the stated purpose for at least 6 months duration after the effective date of the notice.

The landlords testified as follows. When the unit finally became available, they were unable for several personal reasons to move in. The female tenant explained that they had two children at the time, a 6-year old and 2-month-old. She had post partum depression although no supporting documentary evidence was submitted. The female landlord's brother had suddenly died earlier in the year and a copy of his Death Certificate was submitted. The landlords said they had an uncomfortable debt load from student loans and medical expenses; supporting financial records were submitted.

As well, the landlords testified that the unit required more costly repairs than expected. This was discovered when the landlords did a closer inspection after the tenants moved out. They testified they could not afford to do the repairs after all and were overwhelmed by health, family, and financial responsibilities. As well, the male landlord's father was in declining health and required assistance.

As a result of these various factors, the landlords moved into the male landlord's father's house to care for him and decided to sell the unit to pay off debts.

The tenant requested a Monetary Order in the amount of 12 times the monthly rent.

The landlords claimed their circumstances amounted to extenuating circumstances under the Act and requested that the tenant's claim be dismissed without leave to reapply.

Analysis

Section 49 of the Act provides circumstances where a landlord can end a tenancy for landlord's use of property.

Section 49 (3) of the Act provides that 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.

Section 49(5) of the Act provides that a landlord may end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, and:

- all the conditions on which the sale depends have been satisfied, and
- the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - 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;
 - 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.

Section 51 (2) of the Act provides:

(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.

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a landlord to end a tenancy under section 49, if the landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the requirements for a landlord to pay compensation to a tenant when a landlord ends a tenancy for landlord's use of property and does not move in. The Guideline aids understanding about what constitutes "extenuating circumstances".

Extenuating Circumstances

With respect to extenuating circumstances, Guideline #50 provides the following:

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.

The Guideline provides circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are (emphasis added):

- 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 Guideline provides that 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***

Compensation under section 51 of the Act

Based on the above, the evidence and testimony from the landlord and tenant, and on a balance of probabilities, I find as follows:

As acknowledged by the landlords, I find the landlords failed to use the rental property for the reason stated within the Two Month Notice for a six-month duration or as required by the Act. I find the landlords, or a close family member, did not move into the unit and the landlord sold the unit in 2021 having offered the unit for sale in January 2021, about six weeks after the tenant moved out. These facts were not disputed by the landlords.

Considering all the evidence submitted, the *Act* and the Guidelines, I find the landlord has *not* met the burden of proof under section 51(3) that there were extenuating

circumstances justifying the landlord's failure to comply with section 51(2). I find that there is insufficient evidence from the landlords to support that there are extenuating circumstances present making it unreasonable and unjust for the landlord to pay compensation.

In reaching this conclusion, I have carefully considered and weighed the evidence provided by the parties as well as the submissions.

In weighing the evidence, I find it more likely than not that the landlords intended to list the property for sale and never intended to move in. I do not accept their testimony as credible that they suddenly became aware of the cost of repairs when the tenant vacated. The tenant testified to complaints she made to the landlords during the tenancy about various deficiencies and repairs needed in the house. I find it likely the landlords were aware of the poor condition of the house when they issued the Two Month Notice. I find it is not believable or likely that the landlords suddenly learned the full extent of repairs required in December 2020.

While the landlords had reasons for not moving in, I find these reasons do not amount to "extenuating circumstances" and do not meet the threshold required. The circumstances described by the landlords are not akin to the examples in the Policy Guideline.

I find the tenant's application succeeds and the standard of proof has been met by the tenant's testimony and evidence.

Therefore, pursuant to section 51(2) of the Act, the landlord must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement.

I accordingly award the tenant a monetary order in the amount of \$23,940.00.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the tenant was successful with their application, I order the landlord to repay the \$100.00 fee that the tenant paid to make application for dispute resolution.

Summary of Award

My award is summarized as follows:

| ITEM | AMOUNT |
|--------------------------|--------------------|
| Award | \$23,940.00 |
| Reimbursement filing fee | \$100.00 |
| MONETARY ORDER | \$24,040.00 |

I grant the tenant a Monetary Order in the amount of \$24,040.00. This Monetary Order must be served on the landlords. This Monetary Order may be filed in the Courts of the Province of British Columbia and enforced as a Court Order.

Conclusion

I grant the tenant a Monetary Order in the amount of \$24,040.00. This Monetary Order must be served on the landlords. This Monetary Order may be filed in the Courts of the Province of British Columbia and enforced as a Court Order.

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: July 09, 2021

Residential Tenancy Branch