



Dispute Resolution Services

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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, made on February 22, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order granting the return of the filing fee.

The Tenant G.E. and the Landlord T.T. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 2005. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,525.00 which was due to the Landlords on the first day of each month. The Tenants

paid a security deposit in the amount of \$650.00 which has since been returned to the Tenants. The Tenancy ended on August 31, 2020

The parties testified and agreed that the previous Landlord served the Tenants with the Two Month Notice dated June 30, 2020 with an effective vacancy date of August 31, 2020. The Landlord's reason for ending the tenancy on the Two Month Notice was;

"All the conditions of the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit"

The parties testified and agreed that T.T. and his sister J.T. purchased the home and took possession on July 10, 2020. T.T. stated that it was their intent to have J.T.'s son move into the rental unit with some friends while he attended school. The parties agreed that after receiving the Two Month Notice, the Tenants vacated the rental unit on August 31, 2020 in compliance with the Two Month Notice.

T.T. stated that once he gained vacant possession of the rental unit, he noticed that the rental unit required some renovations prior to J.T.'s son moving in. T.T. stated that he completed some renovations to the rental unit and moved some of his possessions into the basement while he renovated upstairs. T.T. stated that he would use the basement to rest during the renovations.

T.T. stated that once the renovations were completed, the intent was to have J.T.'s son move into the rental unit, however, given the rising numbers of infection relating to the Covid-19 pandemic, combined with the fact the J.T. has ongoing health concerns, it was decided that moving J.T.'s son into the rental unit with friends could potentially increase the risk to J.T.'s health, as her son would likely be coming into contact with others who are not in his bubble.

T.T. stated that J.T.'s son continues to live with J.T. and that a decision was made to rent out the rental unit rather than having J.T.'s son move in. T.T. stated that he found new occupants to occupy the rental unit as of February 1, 2021 and that T.T. continues to use the basement of the rental unit for storage.

The Tenant responded by stating that the rental unit did not require renovations and that she had lived there for 11 years. The Tenant stated that the Landlord has provided no evidence that he renovated the rental unit. Instead, the Tenant stated that the T.T. and J.T. decided to re-rent the rental unit, rather than moving J.T.'s son into the rental unit, which had been the intended purpose of the Two Month Notice to End Tenancy. As such, the Tenants feel entitled to compensation in the amount of \$18,300.00 which is equivalent to twelve times the amount of rent as the Two Month Notice was served in bad faith. If successful, the Tenants are also seeking the return of the filing fee.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 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.

According to the Residential Policy Guideline 2A requires the Landlord to Act in good faith;

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.”

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (**see Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

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). Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

The Tenants are claiming compensation in the amount of \$18,300.00 which represents twelve months of rent as the T.T. and J.T. did not follow through on the intended purpose of the Two Month Notice for at least six months after the effective date of the notice.

In this case, I accept that the purchasers of the rental unit (T.T. and J.T.) purchased the home and instructed the Landlord to serve the Tenants with the Two Month Notice as they intended to move J.T.’s son into the rental unit with his friends.

I accept that the Tenants complied with the Two Month Notice and vacated the rental unit on August 31, 2020. During the hearing, T.T. stated that he completed renovation from September 1, 2020 until he re-rented the rental unit on February 1, 2021. I accept that T.T. stored his possession in the basement of the rental unit and would rest there from time to time. I find however that this does not meet the definition of 'occupy' and was not the intended purpose of the Two Month Notice. Furthermore, I find that only 5 months elapsed between the time that T.T. and J.T. had vacant possession on August 31, 2020 and then re-rented the rental unit on February 1, 2021.

I accept that J.T. struggles with health issues, however, I find that the intent of the Two Month Notice was to have J.T.'s son move into the rental unit. I find that the increase of Covid-19 cases does not constitute an extenuating circumstance that would prevent J.T.'s son from moving into the rental unit. I find that it would have been within J.T.'s son's control to exercise his judgement surrounding Covid-19 recommendations and guidelines to reduce the risk of infection.

Instead, I accept that T.T. and J.T. did not follow through on the intended purpose of the Two Month Notice, nor do I find that an extenuating circumstance prevented them from following through on the intended purpose to end the tenancy. Rather, T.T. and J.T. re-rented the rental unit five months after ending the Tenants' tenancy and did not fulfill the requirements of Section 49 of the *Act*.

Based on the above I find that the Tenants are entitled to **\$18,300.00** in compensation from the Landlords, pursuant to section 51(2) of the *Act*. As the Tenants were successful in their application, I also find that they are entitled to the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenants are therefore entitled to a Monetary Order in the amount of \$18,400.00.

Conclusion

The Landlords have not taken steps to accomplish the stated purpose for ending the tenancy under section 49 for at least six months after the effective date of the Two Month Notice. Pursuant to section 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$18,400.00.

The Tenants are provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 20, 2021