



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 Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation of \$19,780.00 from the Landlord, related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated September 21, 2021 ("Two Month Notice"); and to recover the \$100.00 cost of his Application filing fee.

The Tenant, the Landlord, his daughter, A.N. (an agent for the Landlord), and two advocates for the Landlord, D.W. and M.C ("Advocates"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Advocates were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also told the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy was renewed annually, and began on November 26, 2015, with a monthly rent of \$1,600.00, which rose to \$1,640.00 during the tenancy. The Parties agreed that the Tenant paid the Landlord rent on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$800.00, and no pet damage deposit. They agreed that the Landlord returned the \$800.00 security deposit, as well as \$100.00 for the return of a fob deposit.

On September 21, 2020, the Landlord served the Tenant with the Two Month Notice, with the intention that his son would move into the rental unit. The Two Month Notice gave the Tenant until November 30, 2020, to move out, which the Tenant did on that day. However, as the Tenant pointed out, the grounds for the eviction that were checked off on the Two Month Notice were that the rental unit will be occupied by the landlord or the landlord's spouse, rather than the Landlord's child.

The Tenant said:

I received the notice to vacate on September 21, 2020, and in that notice, it said the Landlord or spouse would be using property for their own use. I vacated as requested; however, I later determined it remained unoccupied until placed on the market for sale on February 21, 2021, 63 days later.

The Advocates said that the Landlord's position is that the reason the unit was not occupied by the Landlord's family member(s) was due to extenuating circumstances, pursuant to section 51(3) of the Act. The Advocate, D.W., said:

He served the Tenant with the notice with the intention that this son, [T.], would be able to move into the unit. Regarding having checked that the landlord or his

spouse would occupy the unit, actually, the wrong box was checked off. There was miscommunication between the Landlord and property manager, P.L. The Landlord only said a family member would occupy the unit, and the property manager didn't ask for clarification - he just assumed it would be [the Landlord].

In relation for to the reason for ending the tenancy, when he ended the tenancy and served notice, he intended in good faith that his son would occupy the unit. It would have ended tenancy under 49(5) if the purchaser had requested vacancy. He chose 49(3) because of his good faith intention to occupy.

In the hearing, the Parties said that the Landlord offered the Tenant an extension on the effective vacancy date past November 30, 2020; however, the Tenant said that this offer was never extended to him. The Landlord said that the property manager erred again in not giving the Tenant this offer from the Landlord. I have not included further testimony in this regard, because the Parties did not show me how, and I do not find it relevant to the matters before me.

The Advocate continued:

It wasn't a clear date that [T.] realized he was no longer able to move in. He had trouble finding employment, and keeping any jobs; he still intended to move into the unit, but with less certainty, because he didn't know if he would keep the job, or move to [other towns] where the job is focused. From the Landlord's perspective, he didn't cancel the notice, because he still intended for [T.] to occupy unit at that point. Or if [T.] couldn't, [his daughter, A.] would occupy when she finished when she graduated at the end of 2020.

Policy Guideline #50 sets out the requirements for compensation. It must be paid, unless the arbitrator finds extenuating circumstances.

In the present case, it was [T's] good faith intent and then [A's] good faith intent to move into the rental unit, but then some further extenuating circumstances arose. [T.] intended to move in – he had been married in 2019, and he was living at his mother's house - him and his wife. The following year, Dad said move-in to the residential property. The extenuating circumstance was that on October 19, 2020, [T.] received an unexpected job offer. He had been previously looking for work for a long time, and there was uncertainty about the job. His total income for 2020 was \$7,000.00. He was [travelling] back and forth, and he realized he was

no longer able to occupy the unit, due to nature and location of the work. He now lives with the employer, and rent is part of the job.

The Landlord submitted copies of [T's] marriage certificate and tax form, which indicated that he was married in 2019 and that his income for 2020 was just over \$7,000.00.

The Advocate continued:

After [the Landlord] determined [T.] couldn't occupy the unit – he determined [A.] could, as she was set to graduate from [university] at the end of 2020 – she planned to move to [the residential property town]. This would provide her with some financial support – she would not pay rent. Also, she had to travel between the Island and the Mainland for treatments from an accident. Also, moving to the rental unit would allow for proximity to her family doctor.

The Landlord submitted a sheet detailing [A.'s] doctors' appointments. This contained references to different specialists, too.

The Advocate said:

On December 14, 2020, on page 38 – [A.] emailed a professor about taking her on as a grad student. The professor said funding was not great, and a position for [A.] was not likely. While waiting for confirmation from this professor, [A.] continued to live in Victoria. In January of 2021, she received an offer to work in this professor's lab. But this required in person work in Victoria for her. For that correspondence, see page 40 of the evidence.

That's why [T.] or [A.] were unable to move in.

After [the Landlord] determined this, he considered moving in himself. But his own financial situation forced him to sell the unit. He helps [A.] pay rent in Victoria. He also plans to support her with grad school fees – \$21,000.00 per year for 2 years. See page 42.

It was not feasible to occupy the unit himself. He pays \$300.00 monthly for rent where he lives. He has struggled due to Covid. He relied on CERB payments and the proof is on page 47.

Finally, while it sold for \$667,700, he received only \$350,000.00 after the

mortgage, and a significant portion of this will be subject to tax.

It was never [the Landlord's] intention to evict for selling. He had good relations with [the Tenant]. He wanted someone to maintain the property until he retired there. In the meantime, he intended his son to move in there, but nonetheless, he made the best decision he could with knowledge he had at the time.

The Tenant said that he would have liked to have made comments during the Advocate's submissions. However, I had asked the Parties not to interrupt whoever was speaking, and to make notes about the other Parties' comments, so that they could address them during their turn to respond.

The Tenant pointed out a discrepancy on page 26 of the Landlord's submissions. He said:

The letter from [T's.] employer; the Landlord stated to me that their son received this in October 2020; however, the date in this letter is 2019. So, I'm wondering what other details are not accurate in everything they just rolled out.

One other comment. I met with [the Landlord] and his wife or ex-wife on November 30th for the move out inspection. At that time, they indicated that it was [T.] that would be in the unit. But according to their evidence [T.] had had the job offer in October. Not only that, but the letter from the employer has a date of October 2019.

The Landlord's daughter, A., said:

Re the [T.] situation. I had mentioned this before, that [T.] was travelling back and forth with the job offer. He worked once or twice a week. . . there was a lot of confusion whether he had a job or not, but late in October, he stopped coming home as frequently. He asked for a letter from the employer, and the response from [T.] was that because he started part-time initially, because he was there for 1 or 2 days on weekends.... He asked for that, but since he didn't start working until then, ... I didn't know that it would be a problem that he didn't specify earlier. He didn't start actually staying there longer until later in the month of October 2020. He should have had the offer in October 2020.

The Advocate said:

He started working there full-time in October 2020, about a month after the notice

was served. Re that letter, I don't have an explanation why it is dated 2019, but he started working full-time in 2020. Tommy started working there in October 2020 full-time. I think it was an error, because he wasn't working there in the year he got married.

He had not much income in 2020 – page 24 shows his e-filing tax return. He wasn't working there for the full year.

[The Tenant] tells about when he moved out, that he was told that someone would be moving in. At that time, there was some uncertainty with [T.]; he was going back and forth. [The Landlord] hoped [T.] would be able to move in. Hoping one of the two to move in. When he said that to [the Tenant], it was really just a comment in passing, not that we intended to have [T.] be the one who would move in.

A. said that her parents have limited English.

The Tenant said:

The Landlord made it very clear during the move out inspection on November 30, that [T.] would be occupying unit - three weeks after they evidently offered an extension to my tenancy.

In their evidence package – they said they didn't sell it to make money, but that they had no choice but to put it up for sale. However, they were planning to allow their children to occupy the unit rent free. Why forego \$1,600.00 in rent and allow them to occupy rent free, if money was a concern? There were so many questionable facts to me, I expected rent up at a higher rate or that they would sell the unit. I had set up [internet advertising platform] alerts and I didn't cancel them. And sure enough, I received one from the new owner eight weeks after I moved out for \$600.00 more than I was paying.

To reiterate, I don't believe they had a concrete plan in place, and as far as the income issue forcing it up for sale, how would he allow children to live rent free, if money was an issue?

The Advocate said:

[The Landlord] regrets not being able to have a family member occupy the unit

The income issue isn't in issue in this dispute. Whether he intended to have family members live there rent free is not an issue – it was a family choice. It was due to extenuating circumstances and reasons beyond his control.

[A.] said: “Even though we would live rent free, we still intended to help with maintenance fees, property tax, etc., to help him out.”

Analysis

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

Section 51 of the Act sets out a tenant's compensation, after the landlord serves the tenant with a notice to end the tenancy under section 49 – landlord's use of property. Pursuant to section 51(2), such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord 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.

Section 51(3) of the Act 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.

As explained in Policy Guideline 50:

Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section

49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.

This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

[emphasis added]

PG #50 goes on to say:

A landlord cannot end a tenancy to occupy a rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

...

Further, I find from the Act and PG #50, that the intent of section 49(3) is for a landlord or a close family member to move into the rental unit for more than just the six months noted in the Policy Guideline. Section 49(3) of the Act states:

(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.

[emphasis added]

Policy Guideline #2A, "Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member" states:

Section 49 of the *Residential Tenancy Act* (RTA) allows a landlord to end a tenancy if the landlord:

1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;

...

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

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. 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 (s.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.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.

If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not 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 other ulterior motive. .

[emphasis added]

I find that the intent is not that a landlord or his family must live in a rental unit for six months and then vacate it to re-rent it for a higher rate. **This is what the Act is trying to prevent landlords from doing.**

I found it curious that the Landlord did not have his son, T., testify or submit a statement from him setting out his intention for the rental unit. The Landlord's evidence is that he did not know quite what T. was doing, workwise, as the evidence about his actions was based in part on how often he slept at the family home, rather than on what he told the Landlord.. I infer that it might not have been T.'s intention to move into the residential

property, but rather, his parents' idea. However, before evicting a tenant to use the residential property for the landlord's family, a landlord needs to be sure that it will be used for this purpose. As it turned out, the residential property was sold to a new owner and rented out for \$600.00 more than the Tenant was paying – specifically what the Act aims to avoid.

The effective vacancy date on the Two Month Notice was November 30, 2020, and I find that within six months, by May 31, 2021, the stated purpose for the Two Month Notice had not been accomplished. In fact, the Landlord took no steps for a family member to live in the residential property after evicting the Tenant.

The Advocates said that there were extenuating circumstances here; however, I find that some of the Landlord's evidence is internally inconsistent and, therefore, lacking in reliability. For instance, the Landlord did not explain why his evidence is that T. received an unexpected job offer in October 2020, however, the employment offer is dated October 2019. The Advocates stated that it was probably a mistake, and that the Tenant was working part-time before being made full-time, which required him to live closer to his workplace.

Further, the Tenant noted that the Landlords were still stating that T. was going to move into the rental unit on November 30, 2020, when the Parties did the move-out inspection. Given T's job timeline according to the Landlord's evidence, I find it odd that on November 30, 2020, the Landlords were still talking about their son moving in, rather than their daughter. This raises questions in my mind about the Landlords' true intentions all along, and the veracity of what they were telling the Tenant about the true reason for the eviction. I find that the Tenant's statement is consistent with the "errors" in the Landlord's evidence when the Tenant said: "I don't believe they had a concrete plan in place, and as far as the income issue forcing it up for sale, how would he allow children to live rent free, if money was an issue?"

This is another inconsistency in the Landlord's evidence pointed out by the Tenant. The Landlord's evidence was that he ultimately sold the property for "financial reasons". I find this is relevant to my considerations in that it is another inconsistency in the Landlord's evidence; I find the Landlord's financial concerns are not relevant to the Application, otherwise. As the Tenant pointed out, the Landlord had been receiving \$1,640.00 a month from the Tenant in rent; however, the Landlord said that he intended his son or daughter to live there for free, notwithstanding any maintenance the child might contribute. If the Landlord had issued the Two Month Notice because he was selling the residential property, and the purchaser wanted a tenant, this Tenant could

have continued his tenancy in the rental unit under a new landlord.

Based on the evidence before me, overall, I find that the Tenant is successful in his Application, because I find the Landlord did not provide sufficient evidence to establish that he complied with the Act regarding evicting a tenant for the Landlord's use of the property. I find that the Landlord breached sections 49 and 51 of the Act, by not taking steps within a reasonable period after the effective date of the Two Month Notice to accomplish the stated purpose for ending the tenancy. Rather, the Landlord chose a completely different purpose for the rental unit than what was stated on the One Month Notice as the grounds for the eviction.

I, therefore, award the Tenant with twelve times the rent of \$1,640.00 or **\$19,680.00**, pursuant to sections 51 and 67 of the Act. Given his success in the Application, I also award the Tenant recovery of his **\$100.00** Application filing fee, pursuant to section 72. Accordingly, I award the Tenant with a Monetary Order of **\$19,780.00**, pursuant to sections 51(2) and 67 of the Act.

Conclusion

The Tenant's claim for recovery of 12 times the monthly rent is successful in the amount of \$19,780.00. The Tenant is also awarded recovery of his \$100.00 filing fee from the Landlord.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord of **\$19,780.00**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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 26, 2021

Residential Tenancy Branch