



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 7, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;

The Tenant and the Landlord 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. Is the Tenant entitled to a Monetary Order for money owed or compensation for loss under the *Act*, regulation, or tenancy agreement, pursuant to sections 51 and 67 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 1, 2017. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$875.00 which was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$437.50 which has since been returned to the Tenant. The tenancy ended on May 31, 2020.

The parties testified and agreed that the Landlord served the Tenant with the Two Month Notice with an effective vacancy date of May 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 Tenant is seeking monetary compensation in the amount of \$10,500.00 which is equivalent to twelve times the amount of rent, as the Landlord did not follow through on the intended purpose of the Two Month Notice, for at least 6 months.

The Landlord stated that she served the Tenant with the Two Month Notice after purchasing the rental unit, as she intended on moving into the rental unit, therefore, requiring vacant possession. The Landlord confirmed that the Tenant complied with the Two Month Notice and the Landlord moved into the rental unit on June 4 or 5, 2020. The Landlord stated that she performed some renovations to the rental unit which took about one month. The Landlord stated that she occupied the rental unit for about three months before moving out of the rental unit and re-rented it out to a new occupant on September 1, 2020.

The Landlord stated that an extenuating circumstance prevented her from remaining in the rental unit as intended. The Landlord stated that she has a family dog, who was not permitted in the rental unit which was purchased by the Landlord. The Landlord stated that she had made prior arrangements for the dog to stay with her daughter, so that the Landlord could occupy the rental unit without a pet. The Landlord stated that circumstances changed and that her daughter was no longer able to care for the family dog. Since then, the Landlord has made several attempts at finding a replacement to take the family dog, however, no one was willing or able to take the dog.

The Landlord stated that she received notice to end tenancy from occupants at a different rental unit that the Landlord owns. The Landlord stated that this unit allows

pets, therefore, the Landlord decided to vacate the rental unit after living there for three months, and moved to a different unit with her family dog. The Landlord provided written statements from family and friends which confirm the efforts the Landlord made at finding alternative placement for her dog.

The Tenant stated that the Landlord had no intent on residing in the rental unit long term. The Tenant stated that the Landlord ended the tenancy so that she could renovate and re-rent the rental unit for a higher rent. While the Tenant was sympathetic to the Landlord's situation with her dog, the Tenant questioned whether the rental unit was truly intended to stay long term if the rental unit did not allow pets.

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.

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.

According to the Policy Guideline 50 An arbitrator may excuse a landlord from paying additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable

period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control.

Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.

The Tenant is claiming compensation in the amount of \$10,500.00 which represents twelve months of rent as the Landlord 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 Landlord purchased the rental unit with the intent on moving into the rental unit, which she did for three months after the Tenant moved out. I accept that the Landlord did not occupy the rental unit for at least 6 months.

During the hearing the Landlord stated that her family dog was unable to stay with her as the rental unit did not allow pets. I accept that the Landlord secured her daughter to take the dog, however, those plans fell through a short while later. I accept that the Landlord made attempts at finding a replacement caregiver for the dog, however, was unable to do so.

The Landlord stated that she had no other options than to move out of the rental unit after 3 months and re-rented it to a new occupant, as she decided to move into a pet friendly unit that she also owns.

I find that the Landlord has provided insufficient evidence to demonstrate that the plans relating to the family dog falling through constitutes an extenuating circumstance which prevented the Landlord from following through on the intended purpose to end the tenancy. I find that the Landlord could have anticipated the possibility for having to be responsible for her family dog should plans fall through. The Landlord, knew that the rental unit she intended to occupy was not pet friendly, therefore, she should have anticipated and planned accordingly to ensure that she would be completely absolved from caring for the family pet. Rather, the Landlord's arrangement lasted only three

months before she decided to move out and re-rented the rental unit, not fulfill the requirements of Section 49 of the *Act*.

Based on the above I find that the Tenant is entitled to **\$10,500.00** in compensation from the Landlord, pursuant to section 51(2) of the *Act*. As a result of the above and pursuant to section 67 of the *Act*, the Tenant is therefore entitled to a Monetary Order in the amount of \$10,500.00.

Conclusion

The Landlord did not 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 and 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$10,500.00.

The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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 28, 2021

Residential Tenancy Branch