



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on August 10, 2021. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 51; and,
- recovery of the filing fee.

The Landlords and the Tenants both attended the hearing. The Landlords confirmed receipt of the Tenant's application and evidence package. The Tenants confirmed receipt of the Landlords' evidence package. Neither party raised any issue with respect to the service of this documentation. I find all documents were sufficiently served for the purposes of this proceeding.

Both parties were provided the 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 that was submitted in accordance with the rules of procedure, evidence which was presented at the hearing and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation pursuant to section 51 of the Act?

Background and Evidence

Both parties provided a substantial amount of testimony during the hearing and spoke to their evidence. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above.

The Tenants provided a copy of the tenancy agreement they had with the previous owners of the house, which shows that monthly rent was \$3,500.00 per month. The Tenants stated they received the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice) on or around September 6, 2020. The effective date of the Notice was listed as December 1, 2020. The Tenants provided a copy of the Notice into evidence, and it indicates the following ground as a reason to end the tenancy:

- All of the conditions for 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 named as the respondents on this application, are the purchasers of the home, and were the ones who requested vacant possession of the unit, as of December 1, 2020.

The Tenants are seeking 12 month's compensation, pursuant to section 51 of the Act, because they assert that neither Landlords, nor their close family, ever moved into the rental unit. The Tenants filed this application around March 13, 2021, which is approximately 3.5 months after the effective date of the Notice.

The Tenants provided a letter of support from a neighbour to the rental unit. This letter states that, as of March 9, 2021, to the best of his knowledge, the subject property has sat empty since the new owners took possession on December 1, 2020. This neighbour asserts that he has been working from home lately, so he has kept a close eye on the property, and he has noticed no activity at the house. He noted no cars parked at the house, no lights on at night, and not other sign of residency.

The Tenants also submitted photos taken February 13, 2021, showing no activity at the house, as well as a letter from the current owners to the neighbours, explaining that they were the new owners, that they wanted to move in, but wanted to perform significant renovations prior to doing so (to gain support for their renovations from neighbours).

The Landlords explained that they are currently Tenant's at a different house, and they are not developers, nor do they have any intentions of re-renting the unit or being Landlords themselves, even though they are named as the Landlords for the purposes of this application, and under this portion of the Act (as they requested vacant possession via the 2 Month Notice). The Landlords/new owners bought this house to eventually renovate and move into with their child, and their plans for renovations are significant and extensive. Although the ultimate goal is for the Landlord's to move in with their growing family once all the permits are in order, and the work is complete, they are aware it will be a long time before work can start, and even longer before the renovations are complete. The Landlords' plan is to stay where they are (in the place they are renting) until all renovations are complete on the subject property. The Landlords issued the Notice to the Tenants with the intention of having their parents move in while they wait a significant amount of time for their plans to be approved by the city.

They explained (and provided architectural drawings, work plans, and permit applications) that they are seeking to do a large-scale renovation on this house to take it from a 2-unit rental house, to an updated single family house, suitable for their family, and for their child. The Landlords explained that this house is over 100 years old, and in order to complete their renovations, they have to do significant planning, and have to navigate very lengthy municipal hurdles (permit applications and work plans) in order to begin the renovations. The Landlord stated that before they bought the house, they knew this process would take many months, and likely at least a year to even be approved by the municipality.

The Landlords explained that since they knew it would likely be at least a year before any construction could begin, their plan was to have both of their parents move into the house, as it is still suitable for occupation by their parents, just not for their young family. The Landlords opted to have their parents come and stay in the unit while awaiting permits, and before the start of renovations, because they did not want to move twice (move in before renovations, wait many months, move out again while the lengthy renovations complete, then move back into the house again once renovations were complete). Rather, the Landlords felt it was a better use of the house to have their parents, both of which are from Quebec, to come and stay in the house for an extended period of time and be closer to their family. The Landlords explained that due to COVID-19, there have been extremely limited family interactions, and this seemed like the perfect way to give their parents a chance to be closer to their young child, catch up, and allow their parents to live in their newly acquired house during the lengthy permit approval process.

The Landlords provided affidavits from both sets of parents supporting their intentions to come stay in the rental unit, during the design, planning, and permitting phase. One of the Landlord's, C.M., provided an affidavit from her father who stated that he lives in Quebec, and had not seen his granddaughter since December 2019, which is why he wanted to come, with his wife, and stay at the subject property. These plans were made when the house was purchased around September 2020. However, in the following months, the pandemic worsened, and travel restrictions were placed, both locally, and interprovincially. C.M.'s father stated via his affidavit that Quebec is under a lockdown for travel, and there was strong guidance not to travel for any reason until the pandemic improved. C.M.'s father explained that as of May 2021, there is still a lockdown on travel in Quebec, and BC also has similar travel guidance. He also stated that as of May 2021, he and his wife only had their first vaccine, and are awaiting their second dose, prior to travelling anywhere, given that COVID case counts are still worrisome.

The Landlords also provided an affidavit from R.K.'s father, who also stated that his plan was to come and live at the subject property while renovations were planned, and permits were obtained. This was known to be a lengthy process, so R.K.'s father also saw this as an opportunity to see family, spend time with their grandchild, and reconnect after a not seeing much of each other. R.K.'s father explained that COVID numbers were actually quite good around the time the Landlords bought the house, and plans were hatched. However, in the fall of 2020, things worsened, and provincial lockdowns and travel restrictions were brought in, which caused plans to shift.

R.K.'s father explained that he is 74 and has underlying medical conditions, and with the worsening of COVID-19, he made the decision not to travel to BC to stay at the subject property starting in December of 2020. As of May, he has only received his first COVID vaccine dose, and is awaiting his second before coming to BC and living in the subject property.

The Landlords have also provided copies of flight tickets and booking confirmations for both sets of parents, one of which was purchased on April 19, 2021, for a flight from Montreal to Vancouver on July 22, 2021. The Landlords confirmed that as of July 22, 2021, C.M.'s parents have been living in the subject property, and will be there for a while. R.K.'s father also bought a ticket on May 25, 2021, for a flight from Montreal to Vancouver on August 21, 2021. The Landlords stated that since all parents are now vaccinated, and travel restrictions are somewhat less restrictive, they will be coming to stay at the property. Although the intention was for this to happen right after they took

possession of the property in early December 2020, the COVID pandemic was an “extenuating circumstance” which significantly changed and delayed plans.

The Landlords stated that in anticipation of their parents moving into the rental unit, they moved some furniture into the house in the spring of 2021. Photos were provided, and the Landlords stated they have since moved more into the subject property. The Landlords also set up utilities bills in their names, as well as insurance, to show they intend to use this house for their own use, and their family’s use, not to re-rent or somehow make money off the unit.

During the hearing, the Landlords stated that due to the skyrocketing COVID numbers in the months following issuance of the Notice, and after their offer to buy this house was accepted, they had to delay their parents coming to live in the house indefinitely. Although, as of the time of this hearing, both parents have taken steps to come and live in the unit. The Landlord’s do not dispute that no one lived in the subject property from when the Tenants moved out last fall, until July 22, 2021, when C.M.’s parents came to stay and live in the unit. The Landlords feel they should be excused from having to pay this compensation, as the delayed execution of their initial plan was out of their control. The Landlords stated that they submitted their building permit application in March 2021, but they have not heard anything back from the city, and expect that it will still take many months. During this time, the Landlords’ parents will continue to occupy and live in the house in an overlapping fashion, as they started to do in July 2021.

The Tenants opined that, since both Landlords are physicians, they should have known that COVID was going to be a barrier to having their parents come and stay at the time the Notice was issued. The Tenants stated that they feel the Landlords, after being served with this Notice of Dispute Resolution, fabricated a scenario whereby their parents would come and stay. The Tenants feel the Landlords probably intended to leave the subject property vacant while it was being renovated, and they do not believe that the parents ever intended to move in, as has been suggested by the Landlords. The Tenants feel it is suspicious that much of the Landlords’ documentation (moving truck, flights) was created after the dispute was filed.

The Landlords responded by stating that the pandemic has presented a very challenging set of circumstances, and it has been very hard to predict. They assert their plan was always to have parents come and live in the unit, and they were awaiting either the COVID numbers to drop way down, or for their parents to be fully vaccinated, prior to coming to stay. The Landlords stated that some of the vaccination information only became known in the spring of 2021, which is why there was a delay in getting

plane tickets, and moving furniture. The Landlords deny the assertion that they are trying to cover their tracks after being served with this Notice of Dispute.

The Landlord stated that their parents are not using this house for “vacation”, but rather to stay for long periods of time, and be able to live close to family, during the lengthy planning and approval phase of the renovations. The Landlords stated that if everything went according to plan, their parents would have been able to fly out, and live in the house, starting December 2020, so that they could escape the cold Quebec winters, and spend time in Vancouver with them and their daughter. However, it has been impossible to execute on this plan, given the COVID pandemic and related travel restrictions, and they are stuck trying their best to still have their parents come and visit while the renovation plans are completed.

Analysis

In this case, the Tenants are seeking 12 month’s compensation, pursuant to section 51(2) of the Act, (12 x \$3,500.00) because the Landlord did not use the rental unit in the manner they indicated on the Notice that was issued.

I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD’S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- *accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlord to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the Notice, or that they should be excused from paying the compensation due to “extenuating circumstances”.

I turn to the following portion of the Act:

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.*

(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.

I turn to the following portion of Policy Guideline #50:

Reasonable Period

[...]

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

I have reviewed the totality of the testimony and evidence. I note the Tenants do not feel the Landlords ever planned to have their parents come and live in the house, and that they only made this story up after being served with this Notice of Dispute. The Tenants feel the Landlords planned on keeping the unit empty while their renovations were completed. In contrast to this, the Landlords stated they always planned on having their parents stay for a long period of time, during the months (or year) long permit and design phase of the renovation. I accept that the Landlords reasonably expected this permit and design process to take the better part of a year.

The Landlords have provided multiple affidavits from both parents, as well as plane tickets, and evidence showing furniture has been moved in to allow the parents to stay. The affidavits clearly state that the parents had planned on living at the property, starting in December 2020, but that this plan was delayed due to increasing COVID cases, and the unprecedented travel restrictions being placed on interprovincial travel.

I have reviewed the evidence and testimony on this matter, and I find the Landlords version of events is more detailed and compelling, and is supported by documentary evidence. I accept that the Landlords' intentions were to allow their parents to reside in the subject property, in an overlapping fashion, starting in December 2020, while the

plans and permits were finalized and approved, the following year. I accept that this process takes many months, potentially longer, and that it is reasonable and possible for the Landlords to satisfy the requirements of section 51 f the Act, to occupy or have a close family member occupy the rental unit for at least 6 months, after the effective date of the Notice, as well as proceed with renovation plans that take a long time to execute.

It appears the Landlords' parents are finally executing on their plan to come and stay at the rental unit, in a somewhat delayed and adjusted manner. It appears this started sometime in late July 2021, nearly 8 months after the effective date of the Notice. As stated in the policy guideline above, a reasonable period of time is typically much shorter than this in duration, and will usually only be a matter of weeks, and in this case I find it leads to a breach of section 51(2) of the Act and the "reasonable period" requirements set out under the guidelines.

This typically entitles the Tenants to compensation. However, the issue now becomes whether or not the Landlords have sufficiently demonstrated that there were extenuating circumstances such that they should be excused from accomplishing the stated purpose on the Notice and from paying the Tenants compensation.

In this case, given the evolving nature of the pandemic, the related restrictions, and the impact on the Landlords' plans, it is critical to examine whether or not there were extenuating circumstances such that the Landlord ought to be excused from having to comply with the requirements under section 51(2) and paying the 12 month's compensation.

Residential Tenancy Policy Guideline #50 – Compensation for Ending a Tenancy states as follows:

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. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- *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 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*

I accept that the COVID-19 pandemic, and the subsequent travel restrictions, health guidance, vaccinations availability, and individual health considerations substantially altered life for nearly everyone, including the Landlords and their parents, who wanted to come and occupy the subject property starting in the month the Landlords took possession of their new home. I accept that plans were made with respect to the use of the subject property when the house was bought and the Notice was issued, but these plans were materially impacted due to the pandemic, the tightening travel restrictions, and the difficulty in safely travelling from Quebec to BC within a “reasonable period” of time.

I accept that there have been severe restrictions on social interactions, and travel, many of which increased in severity and scope following the issuance of this Notice. I find this issue is largely beyond anyone’s control and had far reaching implications. I find this situation is an extenuating circumstance such that it would have substantially altered plans and the Landlords’ ability to fulfill the obligations set out in the Notice, and in section 51(2) of the Act. Pursuant to section 51(3), I excuse the Landlord from having to pay 12 months compensation under section 51(2).

Conclusion

I dismiss the Tenants’ application in full, without leave.

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: August 11, 2021

Residential Tenancy Branch