Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

On March 6, 2021, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the "*Act*") and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing. The Landlord attended the hearing with V.R. As well, S.D. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of V.R. and S.D., provided a solemn affirmation.

Tenant C.D.R. advised that they served the Notice of Hearing package and some evidence to the Landlord by registered mail on or around March 11, 2021, and the Landlord confirmed receiving this package. She stated that they did not check to see if the Landlord could view their digital evidence prior to sending it pursuant to Rule 3.10.5 of the Rules of Procedure (the "Rules"). Furthermore, she also advised that they served additional evidence to the Landlord by email to the Landlord's counsel on July 2, 2021.

S.D. confirmed that the Landlord received the Tenants' additional evidence, and that he was able to view their digital evidence as well. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence packages. Despite the Tenants not checking to see if the Landlord could view this digital evidence, as the Landlord had reviewed all of the Tenants' evidence, this evidence was accepted and will be considered when rendering this Decision.

S.D. advised that the Landlord's evidence was served to the Tenants by registered mail on May 24, 2021 and by email on July 9, 2021. The Tenants confirmed that they received this evidence and that they were prepared to respond to it. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, this evidence was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2017 and the tenancy ended when the Tenants gave up vacant possession of the rental unit on August 3, 2020 after being served the Notice. Rent was established at $2,824.90 per month and was due on the first day of each month. A security deposit of $1,325.00 and a pet damage deposit of

$100.00 were also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenants were served with the Notice on June 26, 2020. The reason the Landlord checked off on the Notice was because “The rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child; or the parent or child of that individual’s spouse)”. As well, more specifically, the Landlord checked the circle indicating that the close family member that would be occupying the rental unit would be “The child of the landlord or landlord’s spouse.” It was indicated on the Notice that the effective end date of the tenancy was August 31, 2020.

S.D. advised that there had been tension between the Landlord and the Tenants, so the Landlord hired a property manager, on or around March 2020, to manage the rental unit. She submitted that due to circumstances in the Landlord’s daughter’s personal life, he agreed that she could move into the rental unit. Thus, the Notice was served. The Landlord’s daughter moved in in August 2020 and S.D. referenced multiple pieces of documentary evidence to support the position that the Landlord’s daughter did in fact move in.

S.D. submitted that the Landlord’s daughter could not move into his own home as he was immunocompromised, and there were fears of potential COVID-19 transmission. She cited a medical letter provided as documentary evidence to outline the Landlord’s medical history.

The Landlord’s expectation was for his daughter to live in the rental unit for a long time; however, due to a falling out with him, she moved out in mid to late December 2020. Although, she did leave some of her property in the rental unit. S.D. referenced the documentary evidence submitted that explains the nature of the breakdown of the relationship between the Landlord and his daughter.

S.D. also advised that because the Landlord was a musician and needed a place to play and practice, he moved into the basement of the rental unit on or around mid-September 2020. She referenced documentary evidence submitted to support this. As well, she submitted that the Landlord would occasionally sleep in the basement of the rental unit from December 2020 until February 2021.

The Landlord confirmed that his daughter moved into the upstairs of the rental unit and that he occupied one room in the basement. He advised that his daughter had left a troubled relationship and required a place to live, so they agreed that she could live in the rental unit. However, he had a dispute with her that could not be anticipated, and she moved out of the rental unit in December 2020. He had no ulterior motives when the Notice was served.

S.D. advised that the breakdown of the relationship with the Landlord's daughter was due to the Landlord's disagreement over his daughter's choice in partners, and a dispute over the daughter's responsibility to complete yard maintenance of the rental unit. She submitted that this breakdown was devastating to the Landlord and could not have been reasonably foreseen. As he could not have anticipated his daughter moving out, she stated that this would constitute an extenuating circumstance and she referenced a number of past Decisions of the Residential Tenancy Branch that she believes are applicable to this scenario.

With respect to the reason checked off on the Notice, S.D. provided completely contradictory submissions. At first, she stated that the Landlord's intention was to use the rental unit, in addition to having his child use it as well. She submitted that the property manager filled out the Notice and this person mistakenly only checked the circle indicating that the close family member that would be occupying the rental unit would be "The child of the landlord or landlord's spouse." She cited Section 68 of the *Act* to suggest that the Notice can be amended if it was reasonable that the Tenants knew that the Landlord would also move into the rental unit. However, after some questioning, she then confirmed that at the time the Landlord spoke to the property manager, he conveyed his intention that the Notice was to be served because of his desire to have his daughter reside in the rental unit only.

C.D.R. advised that they were not aware that the Landlord had an intention to use the rental unit. She stated that the Landlord had always threatened to have his daughter move into the rental unit so they accepted the Notice. However, had they seen the Landlord's name on the Notice, they would have disputed it. As well, they did not dispute the Notice as the property manager advised them, via an email dated June 26, 2020, that the Landlord's daughters would be occupying the rental unit. At no point did they expect the Landlord to also occupy the rental unit.

The Tenants made numerous other submissions with respect to the difficult relationship they had with the Landlord, they continually made submissions with respect to their

belief that the Landlord did not serve the Notice in good faith, and they provided a significant number of exhibits as documentary evidence to support these points. However, most of this was not relevant to the reason on the Notice. It is evident that there was a troubled history of this tenancy between the parties, and both parties were likely to be responsible for this difficult relationship.

With respect to the reason on the Notice, they submitted that the Landlord failed to show proof that his daughter lived in the rental unit long term and noted that she did not register her car at the dispute address. They also questioned why the Landlord's hydro bills spiked so much. They claimed that the pictures that the Landlord used to stage the property for sale were the same pictures the Landlord submitted to prove that the rental unit was occupied. Finally, they referenced a text message from the Landlord's daughter where she suggested that she could move her property, from the rental unit, into the Landlord's home.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The first issue I must consider is the validity of the Notice. When reviewing the Notice and the testimony of the parties, I am satisfied that both parties understood that the property manager served this Notice on behalf of the Landlord. While S.D. initially alluded to the only reason on the Notice of "The child of the landlord or landlord's spouse" being a mistake on the part of the property manager as it was also the Landlord's intention to occupy the rental unit, I find it important to note that she then corrected this submission. Moreover, I find the suggestion that the Landlord had also

intended to use the rental unit to be contradictory to the initial submission that the rental unit was offered to the daughter because he was immunocompromised, and this provided a safe distance from her. Finally, I note that the Landlord submitted an email from the property manager, dated July 6, 2021, where she stated that "I understood one of your daughters was moving in." Based on all of the above, I am satisfied that the reason on the Notice that the rental unit will be occupied by "The child of the landlord or landlord's spouse" was the only purpose for service of the Notice.

With respect to the Tenants' claim for twelve-months' compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was dated June 26, 2020 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

> ***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*
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> > *(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.*

At the time the Notice was served, the Landlord advised that the intention was for the child of the Landlord or Landlord's spouse to move into the rental unit and that the Notice was served in good faith. There is no doubt that this may have been the case; however, the good faith requirement ended once the Notice was accepted by the Tenants and after they gave up vacant possession of the rental unit. What I have to consider now is whether the Landlord followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, Policy Guideline # 2 states that “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).”

As well, Policy Guideline # 50 states the following:

> Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.
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> Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on 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 for at least 6 months. A landlord cannot convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

Finally, Policy Guideline # 50 outlines the following about extenuating circumstances: “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.

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the "child of the landlord or landlord's spouse" only. Moreover, the undisputed evidence is that while the daughter moved into the rental unit, she gave up vacant possession of the rental unit and moved out in December 2020, which was within six months of the effective date of the Notice. As the rental unit was not occupied for the stated purpose for at least six months after the effective date of the Notice, I am satisfied that the Landlord has failed to use the rental unit as per the *Act*, and the only thing I must consider now are extenuating circumstances.

While S.D. advised that the extenuating circumstance that prevented the Landlord from using the rental unit for the stated purpose for at least six months was because of the unanticipated breakdown of the relationship with his daughter, I am not satisfied that this would constitute an extenuating or unforeseen circumstance as the Landlord was an active participant in this relationship. Furthermore, this breakdown stemmed from the Landlord's disagreement over his daughter's choice in partners and due to an argument over required yard maintenance. Clearly, the Landlord's actions were likely a factor that contributed to the breakdown, and I find that this possible outcome could have reasonably been foreseen and anticipated. Moreover, the Landlord could have taken steps to mend any differences with his daughter instead, to the point that she could have fulfilled her obligation to occupy the rental unit for a period of at least six months after the effective date of the Notice.

S.D. referred to past Decisions of the Residential Tenancy Branch that she believes are instructive in this circumstance; however, I note that I am not bound or obligated to follow past Decisions of the Residential Tenancy Branch. As I am satisfied that the Landlord played an active role in the breakdown of the relationship with his daughter, which caused her to move out, I find that this would not constitute an extenuating or unforeseen circumstance.

Consequently, I am not satisfied that there were any unforeseen or extenuating circumstances that prevented the Landlord from using the rental unit for the stated purpose for at least six months after the effective date of the Notice. As such, I am satisfied that the Tenants are entitled to a monetary award of 12 months' rent pursuant to Section 51 of the *Act*, in the amount of **$33,898.80**.

As the Tenants were successful in their claim, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 51, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Compensation for not using the rental unit for the stated purpose for at least six months	$33,898.80
Recovery of Filing Fee	$100.00
Total Monetary Award	**$33,998.80**

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$33,998.80** 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: August 18, 2021

Residential Tenancy Branch