



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0810867 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation from the landlords related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Landlord BM, landlord LG, the landlord company's lawyer, landlord CO ("purchaser"), the purchaser's lawyer, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 47 minutes from 1:30 to 2:17 p.m.

Landlord BM confirmed that he was the executor of the estate of the sole shareholder of the landlord company named in this application. He confirmed that the sole shareholder is deceased ("deceased landlord"). He stated that he had permission to represent the estate of the deceased landlord and the landlord company at this hearing. Landlord LG confirmed that she was the accountant of the landlord company and that she had permission to represent it at this hearing. Landlord BM confirmed that the landlord company's lawyer had permission to represent the estate of the deceased landlord and the landlord company at this hearing. He provided a written authorization to this effect, for this hearing.

The estate of the deceased landlord and the landlord company are collectively referred to as the "former landlord" in this decision. The purchaser and former landlord are collectively referred to as "landlords" in this decision.

Landlord BM, landlord LG, and the landlord company's lawyer confirmed their names and spelling. The landlord company's lawyer provided her email address for me to send a copy of this decision to the former landlord after this hearing.

The purchaser confirmed her name and spelling and provided her lawyer's email address for me to send a copy of this decision to her after this hearing. The purchaser confirmed that her lawyer had permission to speak on her behalf at this hearing. The purchaser confirmed the rental unit address. The purchaser's lawyer confirmed her name and spelling.

The tenant confirmed her name and spelling and provided her email address for me to send a copy of this decision to her after this hearing.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*"). All participants separately affirmed that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, as well as the potential consequences and outcomes, to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make decision. Neither party made any adjournment or accommodation requests.

The landlord company's lawyer and the purchaser confirmed receipt of the tenant's application for dispute resolution hearing package. The tenant confirmed receipt of the landlords' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application and the tenant was duly served with the landlords' evidence.

The tenant claimed that although she received the landlords' evidence late, she was ready and wanted to proceed with this hearing.

The tenant confirmed receipt of the former landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 25, 2021 ("2 Month Notice"). In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the former landlord's 2 Month Notice.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation under section 51(2) of the *Act*?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant and the landlord company's lawyer agreed to the following facts. This tenancy began with the former landlord on April 1, 2007 and ended on March 31, 2021. Monthly rent of \$1,025.00 was payable on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were paid by the tenant and the former landlord returned both deposits to the tenant. A written tenancy agreement was signed in the year 2020, by the former landlord and the tenant, for a fixed term tenancy from April 1, 2020 to March 31, 2021. The rental property is a rural farm where there are two residences. The rental unit is one residence that was occupied by the tenant. The second residence was occupied by a different tenant ("other occupant in second residence").

The tenant and the landlord company's lawyer agreed to the following facts. The tenant vacated the rental unit, pursuant to the 2 Month Notice, and received one-month free rent compensation, as per section 51 of the *Act*. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the notice was March 31, 2021. The reason indicated on the 2 Month Notice was:

- *All of the conditions for 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 seeks compensation under section 51(2) of the *Act* for twelve months of rent compensation of \$1,025.00, totaling \$12,300.00, plus the \$100.00 application filing fee. The tenant claimed that because the purchaser did not use the rental unit for the purpose on the 2 Month Notice within a reasonable time period after the effective date of the notice, the tenant is entitled to compensation. The landlords dispute the tenant's application.

The tenant testified regarding the following facts. The property was for sale and sold in January 2021. She did not know the details of the sale. She was given a 2 Month Notice and the buyer's notice to use the property for personal use. After moving out, the tenant was told that no one lived in the rental unit. On May 20, 2021, the tenant went to the rental unit and no one was living there. She did not enter the property, since she did not have keys and it would be trespassing. She took photographs from outside the window of the rental unit, which show there was no furniture inside and there were no vehicles on the property. She emailed the deceased landlord, he said he was unaware, and the property would be used soon. It was hard for the tenant to find another place, so she could have used a few extra months at the rental unit before moving out. The tenant provided an email, dated March 6, 2021, between the deceased landlord and his real estate agent, which indicates that the rental unit would be empty for four months. Someone at the RTB suggested to the tenant, that one month or more to move into the rental unit, would be a "reasonable" period of time. The tenant's tenancy should have continued on a month-to-month basis even though her lease had expired. She was not told the date of completion was July 2, 2021, until she got the landlords' evidence for this hearing. She was not given any detail as to who was at fault, so she named both landlords in this application. Her evidence shows that the rental unit was vacant for a few months. The purchaser did not move into the rental unit in a "reasonable" period of time, so the tenant is entitled to compensation.

The landlord company's lawyer made the following submissions. On January 7, 2021, the landlord company entered into a contract of purchase and sale ("CPS"), which was provided for this hearing. August 6, 2021 was the original completion date according to the CPS. In paragraph 5 of the CPS, one of the subjects was vacant possession for all the buildings, which included two residences on the property. On January 20, 2021, the buyer issued a written notice to the seller for the tenant to vacate the rental unit, which was provided for this hearing. On January 25, 2021, the former landlord served a 2 Month Notice, pursuant to section 49 of the *Act*, to the tenant, which was provided for this hearing. March 31, 2021 was the effective date of the 2 Month Notice, which coincided with the fixed term end date for this tenancy. The purchaser moved into the rental unit in a reasonable period of time, as per section 51 of the *Act*. On May 27,

2021, the CPS was amended to change the completion date from August 6, 2021 to July 2, 2021, which was provided for this hearing. The tenants in both residences vacated the rental property by July 2, 2021. The buyer took possession of the rental unit on July 2, 2021. The 2 Month Notice was issued in good faith for the purchaser to occupy the rental unit. The former landlord complied with the *Act*, since notice was given to the tenant of the buyer's intention to move into the rental unit. The former landlord provided copies of previous RTB decisions regarding 2 Month Notices and compensation, for this hearing.

The purchaser's lawyer made the following submissions. She was the lawyer for the purchaser on the real estate transaction for the purchase of this property. She knows that there was a concern regarding the other occupant moving from the second residence at the rental property. The completion date was moved from August to July 2021, an earlier date, once they were confident that the other occupant would be moving from the second residence on the property. The rental unit is on a farm, there are two residences and farm buildings, and this is not an urban property, but a rural one. The purchaser had to move sheep off the property.

The purchaser testified regarding the following facts. She took possession of the rental unit and the whole rental property on July 2, 2021. She moved her furniture into the property. She had to complete cleanup, maintenance, and repairs to the rental property. She moved into the rental unit, which is a cottage, with her family, including her husband and two children. The other building required more repairs. There is a car shop on the property, occupied by a mechanic, which requires extensive repairs. She has sheep and she had to fix the roof of the barn at the property. She wants to move more of her animals there, including goats and chickens. She wants to plant an orchard there. She is home schooling her two children at the rental property. There is a lower barn that was leased to a local farmer and an upper barn that was leased to a mechanic. She never met either one of those people. She is also occupying the second residence on the property, with her husband and children. She does not know the tenant or the other occupant, that were previously occupying the two residences at the rental property. She never met them, she was not their landlord during their tenancies, and she did not have anything to do with their tenancies.

The tenant stated the following in response to the landlords' submissions. She is friends with the other occupant of the second residence at the rental property. She knows that he moved out from his residence at the end of June 2021. She was told by him that he had a problem finding a place to live.

Analysis

This application was filed by the tenant on May 22, 2021. At the time of the tenant's application, it was the tenant's burden of proof, on a balance of probabilities, to prove the requirements below in section 51(2) of the *Act*. I am required to consider that burden, even though this hearing occurred on November 23, 2021. Effective July 1, 2021, this burden switched to the landlord.

Section 51(2) of the *Act* establishes a provision whereby a tenant is entitled to a monetary award equivalent to twelve times the monthly rent if the purchaser does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

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.*

It is undisputed that the tenant vacated the rental unit on March 31, 2021, pursuant to the 2 Month Notice, and received one-month free rent compensation, pursuant to section 51 of the *Act*.

It is undisputed that the former landlord sold the rental unit to the purchaser and that the purchaser asked for vacant possession to occupy the unit. A copy of the CPS, dated January 7, 2021, was provided for this hearing. In paragraphs 4 and 5 of the CPS, it states that the purchaser requested "vacant possession of all buildings upon completion" on August 6, 2021. The addendum to the CPS, dated May 27, 2021, was provided for this hearing, changing the completion and possession date to July 2, 2021.

The addendum stated that “the Seller has informed the Buyer that all the buildings on site, including the two residences will be vacant as of July 1, 2021.” The tenant did not dispute the above two documents or the contents within them.

The landlords provided a written copy of the buyer’s notice to seller for vacant possession, dated January 20, 2021. The tenant did not dispute this document or the contents within it. This notice confirms that the rental unit was sold from the former landlord to the purchaser, pursuant to a CPS. It states that the purchaser asked for vacant possession to move into the rental unit in good faith. It states that notices to end tenancy had to be issued to the tenants, by the former landlord, pursuant to section 49 of the *Act*. It states that “the Buyer intends, in good faith, to occupy for personal use all buildings located on the Property.”

It is undisputed that the purchaser and her family moved into the rental unit and occupied the entire rental property as of July 2, 2021, the completion and possession date according to the CPS addendum.

Section 51(3) of the *Act* states the following:

(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.

Residential Tenancy Policy Guideline 50 states the following, in part, with respect to extenuating circumstances:

E. 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.*

I am required to consider the above section 51(3) of the *Act*, regardless of whether it is raised by any party during this hearing.

I find that the former landlord and purchaser showed extenuating circumstances prevented them from accomplishing the stated purpose for ending the tenancy, within a reasonable period of time after the effective date of the 2 Month Notice.

It is undisputed that this is a rural property with farm buildings, two residences, and animals; this is not a simple, urban residential property. It is further undisputed that the deceased landlord passed away sometime between early March 2021, when the tenant provided emails communicating with him, and this hearing date of November 23, 2021. It is undisputed that the deceased landlord's estate had to respond to the tenant's application in this matter. The death and estate involvement are unforeseen events that could not have been predicted or controlled by either party.

It is undisputed that the 2 Month Notice was issued to the tenant, effective on the same fixed term tenancy end date of March 31, 2021, as indicated on both parties' written tenancy agreement. The tenant signed this tenancy agreement on March 27, 2020, for a fixed term of one year from April 1, 2020 to March 31, 2021. I find that the tenant was not required to sign a written tenancy agreement, since she had already been living at the rental unit in a tenancy, since April 1, 2007, 13 years prior to April 1, 2020. The tenant provided a copy of this tenancy agreement for this hearing. The tenant also provided a copy of the addendum to the tenancy agreement, dated April 1, 2020, which she initialed. The addendum indicates that "the tenancy may be terminated with two (2) months written notice." The tenant was then served with a 2 Month Notice effective on the fixed term tenancy end date.

I find that the time period between the CPS date of January 7, 2021 and the completion date of July 2, 2021, was reasonable, given the circumstances in this case. I further find that the time period between the March 31, 2021 date, when the tenant vacated the rental unit, pursuant to the 2 Month Notice, and the July 2, 2021 date, when the purchaser took possession and occupied the rental property, was a reasonable period of time of just over three months, given the extenuating circumstances. I do not find that the former landlord issued the 2 Month Notice to the tenant too early, rather than continuing her tenancy on a month-to-month basis, after the fixed term, as alleged by the tenant. Many different factors including financing, the rural property, the parties' own personal circumstances, and the ongoing covid-19 pandemic, may have also affected this time period and contributed to the extenuating circumstances.

I find that neither the former landlord, nor the purchaser, could have known at the time of the CPS or the buyer's notice to seller, both issued in January 2021, whether the following events would occur: whether tenant would dispute her 2 Month Notice at the RTB; whether an RTB hearing (and the waiting period for a hearing) would be required to obtain an order of possession; whether the tenant and other occupant would vacate the rental property; and how long it would take to obtain vacant possession of the entire rental property.

I accept the purchaser's testimony that she never met the tenant or the other occupant and she was not the landlord for their tenancies. The deceased landlord passed away prior to this hearing, so he was unable to provide affirmed testimony.

I accept the submissions of the purchaser's lawyer, who was also the lawyer for the purchaser during the real estate purchase of this rental property. I accept her statements that there was a concern about whether the other occupant would move out of the second residence on the rental property.

I accept the tenant's own testimony that she knows the other occupant of the second residence, she spoke to him, he told her that he moved out at the end of June 2021, and he was having problems finding a new residence. The tenant also testified that it was difficult for her to find another residence. Therefore, the tenant's own evidence indicates that there were questions regarding when the vacancy of the rental property would occur, due to both occupants having difficulty finding new residences.

I find that the purchaser was not legally entitled to take possession of the rental unit until the completion and possession date of July 2, 2021. The CPS, the addendum to the

CPS, and the buyer's notice to seller for vacant possession, all state that "all buildings" on the rental property must be vacant for the purchaser to take possession and occupy the rental property. Therefore, I find that the purchaser and her family could not have occupied the tenant's rental unit only, after March 31, 2021, and prior to July 2, 2021. The purchaser was not entitled to do so, until the second residence was also vacant.

I accept the evidence and submissions of the purchaser, the purchaser's lawyer, and the landlord company's lawyer that once the purchaser was informed that the rental property would be vacant by July 1, 2021, she wanted possession immediately on July 2, 2021, and executed an addendum to that effect on May 27, 2021. The tenant confirmed that the other occupant vacated the second residence at the end of June 2021. Therefore, I find that the purchaser moved in as soon as she reasonably could on July 2, 2021, once both residences on the property were vacant, as required by the CPS, the addendum to the CPS, and the buyer's notice to seller.

Accordingly, I find that the tenant is not entitled to twelve times the monthly rent of \$1,025.00, totalling \$12,300.00, from the landlords. As the tenant was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlords. The tenant's entire application is dismissed without leave to reapply.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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: November 24, 2021

Residential Tenancy Branch