Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFL

Introduction

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

- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to sections 51 and 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this Decision.

Both parties agree that the landlords were served with the tenant's application and first evidence package via registered mail. The tenant testified that the above documents were mailed on July 15, 2021. The landlord confirmed receipt shortly after that but could not recall the specific date. I find that the above documents were served on the landlords in accordance with section 89 of the *Act.*

The landlords testified that they served their evidence on the tenant via registered mail on November 1, 2021 and November 30, 2021. The tenant testified that she received both packages but did not specify the date. I find that the tenant was served with the landlords' evidence in accordance with section 88 of the *Act.*

The tenant testified that she served the landlords with her second evidence package via registered mail on November 30, 2021. The tenant entered into evidence a Canada Post registered mail receipt stating same. The tenant testified that this second evidence package responded to the evidence received from the landlords. The tenant testified that the evidence was returned to sender. The landlords testified that they were out of town when the tenant's second evidence package was served and so did not receive it. I find that the tenant served the landlords with the tenant's evidence in accordance with section 89 of the *Act* and the landlords were deemed served with the tenant's second evidence package on December 5, 2021.

The landlords testified that they received the tenant's written response to their evidence/submissions via email on December 24, 2021, but no documentary evidence. I find that the landlords were sufficiently served, for the purpose of this *Act*¸ pursuant to section 71 of the *Act*, with the tenant's written response to the landlords' evidence on December 24, 2021 because receipt was acknowledged on that date. I note that in rendering this decision, I did not rely on any evidence in the tenant's second evidence package as it was not relevant. The outcome of this decision was not impacted by the inclusion of the tenant's second evidence package.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to sections 51 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on June 1, 2011 and ended on or around March 31, 2021 pursuant to a Two Month Notice to End Tenancy

for Landlord's Use of Property (the "Notice"). Monthly rent in the amount of $1,300.00 was payable on the first day of each month. A security deposit of $600.00 and a pet damage deposit of $600.00 (the "deposits") were paid by the tenant to the landlords. $1,100.00 of the deposits were returned to the tenant at the end of this tenancy. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the landlords served the tenant with the Notice via email on January 31, 2021. The tenant testified that she received the Notice on January 31, 2021. The Notice was entered into evidence and states that the tenant must vacate the subject rental property by April 1, 2021 because the unit will be occupied by the landlord or close family member.

Both parties agree that the landlords listed the subject rental property for sale on May 21, 2021, the subject rental property was sold on June 4, 2021, and possession was granted to the new owners on July 20, 2021.

The tenant testified that the landlords are required to pay her 12 months' rent, pursuant to section 51 of the *Act,* because the landlords did not accomplish the stated purpose for ending the tenancy and did not use the subject rental property for the stated purpose for at least six months duration.

The tenant testified that she is also seeking the following moving related expenses:

Item	**Amount**
Movers	$1,293.60
Mail forwarding	$91.14
Furniture removal	$415.80
Cable connection fees	$100.00
Hydro connection fee	$12.40
Total	**1,912.94**

Receipts for the above expenses were entered into evidence. The tenant testified that the landlords served the Notice in bad faith as evidenced by their failure to move into the subject rental property and their quick sale of the subject rental property, contrary to the reason for ending the tenancy set out in the Notice. The tenant testified that she suffered the above losses due to the illegal eviction.

The tenant testified that she hired movers, forwarded her mail to her new address and paid connection fees for cable and hydro. The tenant testified that the property she moved into was smaller than the subject rental property and could not hold all of her furniture so in March of 2020 she hired a junk removal company to haul some of her furniture to the dump. A receipt for this in the amount of $207.90 was entered into evidence. The tenant testified that when she moved into her new place it became clear that all of the furniture moved by the movers would not fit and the junk removal company was again hired to haul some of her furniture to the dump. A receipt in the amount of $207.90 for the second trip to the dump was entered into evidence.

The landlords testified that they acted in good faith and were not able to move into the subject rental property due to extenuating circumstances. The landlords testified that in January of 2021 they decided that they needed more space because they were working and studying from home. The landlords testified that they live in a one-bedroom apartment in a large city and the subject rental property is a house in a smaller city.

The landlords testified that they have a business in the large city. The landlords testified that they planned to keep their one-bedroom apartment in the large city to stay in when required for the business but would primarily reside in the subject rental property.

The landlords testified that shortly after the tenant moved out a substantial change to their business occurred which required the landlords to stay in the large city. The landlords testified that they were put in a challenging situation and were not sure what do with the subject rental property. The landlords testified that they considered various options including one landlord living in the big city and the other landlord living at the subject rental property. The landlords testified that they eventually made the decision to stay in the big city together and to sell the subject rental property.

The landlords testified that when they decided to sell the subject rental property, they were not at liberty to tell the tenant about the substantial change to their business because they signed a confidentiality agreement. A redacted copy of The Mutual Confidentiality Agreement signed by the landlords was entered into evidence. The landlords testified that since they could not tell the tenant details about their primary reason for selling the subject rental property, they decided to tell the tenant about their concerns regarding the cost of the renovations required at the subject rental property.

Both parties agree that the landlords emailed the tenant on May 8, 2021 regarding their changed plans. The May 8, 2021 email was entered into evidence and states:

> Hi [tenant],
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> I hope you are settling in nicely to your new home. Moving here has been so interesting, we are loving the calm and quiet of [the subject rental city] and being close to family. I hope you and [redacted for privacy] are loving your new neighbours and enjoying the warmth of Spring.
>
> I wanted you to be the first to know that we have, after all the big plans to make a move to the [subject rental city]- decided to sell the house. After learning what needs to be done to get the house to a place where we'd be happy, it's proving to be way too expensive. New roof, new kitchen, and updates to just about everything! We don't want to, but it feels too daunting to undertake such a huge reno project with [landlord D.S.] in school, and with still so many challenges with the business in [the big city]. We thought we had thought this through, and believed it was time - but so many factors have led us to the decision to list the house. I hope you're not mad at us! I know it was hard to leave but you said it was good for you too, in the end….

The landlords testified that the costs of the required renovations were only a small part of their decision to sell. Both parties agree that the landlords were aware that the roof required replacing before the Notice was served. The tenant testified that the landlords were well aware of the age and condition of the subject rental property. This was not disputed by the landlords.

The landlords testified that they could not provide any testimony in this hearing detailing the substantial change to their business due to the terms of the confidentiality agreement they signed.

Analysis

Section 51 Claim

Based on the testimony of both parties I find that the tenant was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act,* with the Notice on January 31, 2021 because the tenant confirmed receipt on that date.

Section 49(3) of the *Act* states:

> 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.

Both parties made submissions regarding the good faith of the landlords in serving the Notice. I find that good faith as outlined in Residential Tenancy Policy Guideline 2A is not determinative on a section 51 claim.

Residential Tenancy Policy Guideline 2A states in part:

> 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.
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> 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.
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> 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.
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> 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.

I find that good faith usually comes into play if a tenant is seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, which is not the case in this dispute. This dispute is centered around section 51 of the *Act* which does not contain a "good faith requirement".

Section 51 of the *Act* states:

> **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
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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
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> (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.

[Emphasis added]

As the subject rental property was sold and possession granted to new owners less than four months after the eviction, I find that the landlords did not use the subject rental property for the purpose stated on the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the Notice, contrary to section 51(2)(b) of the Act. Therefore, the tenant is entitled to 12 months' rent compensation unless I find that extenuating circumstances prevented the landlords from using the rental unit for the purpose stated on the Notice.

Residential Tenancy Policy Guideline #50 states:

> 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:
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> • 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.
> • A tenant exercised their right of first refusal, but did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.
>
> The following are probably not extenuating circumstances:
> • A landlord ends a tenancy to occupy the rental unit and then changes their mind.

> • A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds

The landlords testified that the primary reason they were unable to reside in the subject rental property was due to a substantial change to their business that required the landlords to remain in the big city. The landlords testified that they could not speak to those changes due to The Mutual Confidentiality Agreement entered into evidence.

The onus to prove extenuating circumstances rests with the landlords. As the landlords have not provided any information regarding the change to the business, I find that the landlords have not proved, on a balance of probabilities, that the change to their business was so substantial that they could not move into the subject rental property or that the change could not have been reasonably anticipated. The presence of a confidentiality agreement does not remove the landlords' onus to prove extenuating circumstances.

I find that the landlords have not presented any evidence proving that the repairs/renovations required at the subject rental property could not have been known following reasonable enquiry. I find that failing to adequately consider and investigate the cost of repairs and renovations prior to serving the Notice does not constitute an extenuating circumstance. The landlords should have enquired as to the renovation/repair costs before serving the tenant with the Notice. I find that the landlords have not proved that extenuating circumstances prevented them from complying with the reason to end tenancy stated on the Notice.

Pursuant to section 51(2) of the *Act,* I find that the tenant is entitled to recover 12 months' rent in the amount of $15,600.00 from the landlords.

Section 67 Claim

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director

> may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under section 67 of the *Act,* there is a requirement that the party claiming compensation must do whatever is reasonable to minimize their loss. One way to minimize their loss is by applying for compensation pursuant to s. 51(2) of the *Act*, not pursuant to both section 51 and section 67 of the *Act.* I find that the above failure to mitigate is fatal to the section 67 claim.

I also note that the 12 months rent payable under section 51 of the *Act* is meant to compensate the tenant for damages arising out of the failure of the landlords to comply with the Notice. I find that to award the tenant the statutory claim in section 51 of the *Act* and damages stemming from the tenant's move, pursuant to section 67 of the *Act*, would amount to double compensation, which is not intended by the *Act.*

Pursuant to my above findings, the tenant's section 67 claim for damages stemming from the tenant's move, are dismissed without leave to reapply.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the $100.00 filing fee from the landlords, pursuant to section 72 of the *Act.*

Conclusion

I issue a Monetary Order to the tenant in the amount of $15,700.00.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: January 19, 2022

Residential Tenancy Branch