



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNETC, FFT

Introduction

Pursuant to the [Residential Tenancy Act](#) (the Act), I was designated to determine a residential tenancy dispute in response to an application filed by the Tenant on July 20, 2021 against the Purchaser of the rental unit. The Tenant has applied for (1) compensation from the Purchaser for ending the tenancy for landlord's use of property (2) repayment of their fee for filing the application.

The Tenant and the Purchaser (NK, RK) attended the proceeding and affirmed they would provide truthful testimony. An interpreter and additional owners of the rental unit, MG, KG, and their father AG, also attended and affirmed they would provide truthful testimony.

The Purchaser confirmed receipt and review of the Tenant's application and supporting evidence. The Tenant confirmed receiving the Purchaser's response and stated she had time to review it.

Naming Parties

The Purchaser requested that MG and KG be added as respondents to the Tenant's application. The Purchaser provided a title search record showing RK and NK have an undivided half interest in the rental unit and MG and KG have an undivided half interest in the rental unit. MG, KG and AG testified and provided documentary evidence that AG's father was supposed to occupy the rental unit but pandemic restrictions on international travel prevented it.

As [Rule 7.12](#) enables me to add parties to the proceeding, I asked the Tenant if she wanted to add MG and KG as respondents to her application. The Tenant said she named NK and RK because they are listed on the notice to end tenancy and she was not ready to add MG and KG.

As described below in Background and Evidence, the Tenant's records of the landlord's notice to end tenancy and the contract of purchase and sale addendum for subject removal both indicate NK and RK are the purchasers of the rental unit. NK and RK acknowledged in their testimony and written submissions that they purchased the rental unit and intended to occupy it.

In relation to a notice to end tenancy for landlord's use of property, section 49(1) of the Act defines a purchaser as "a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit." The title search record indicates NK and RK meet the definition of a purchaser.

As NK and RK agreed to purchase at least 1/2 of the full revisionary interest in the rental unit and acknowledge they intended to occupy the rental unit, I decline to use my authority under Rule 7.13 to unilaterally add MG and KG as additional respondents to the Tenant's application.

Issues to be Decided

- 1) Is the Tenant owed compensation because the Purchaser has not accomplished the stated purpose for ending the tenancy within a reasonable period or failed to use the rental unit for the purpose for which the notice was given?
- 2) Is the Tenant entitled to recover their application fee from the Purchaser?

Background and Evidence

The Tenant submitted a December 2014 tenancy agreement and testified she lived in the rental unit with her four children. She was paying \$1,673.00 per month in rent when the tenancy ended. During her tenancy the rental unit was half of a duplex. The Tenant learned of the potential sale of the rental unit in November 2020. She met one of the Purchasers who told her he had not yet decided what to do with the rental unit.

The Tenant submitted the RTB-32 Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) she received from her landlord. It states "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." Attached to the Notice is a Contract of Purchase and Sale Addendum for Subject Removal (Addendum).

The Addendum is dated January 22, 2021. The landlord signed the Notice on January 23, 2021 and provided March 31, 2021 as the effective date. The Notice and the Addendum both name NK and RK as the purchasers of the rental unit.

The Tenant accepted the good faith intention of NK and RK to occupy the unit and vacated the rental unit on February 28, 2021.

The Tenant returned to the rental unit in July 2021 and discovered the rental unit was now two separate units and the Purchaser was not occupying either one.

The Purchaser testified they purchased the rental unit and gained possession on March 18, 2021. They acknowledged in their written submission and testimony that neither they, nor their close family member, have occupied the rental unit after the effective date of the notice, March 31, 2021.

The Purchaser submits they intended in good faith to occupy the rental unit but due to extenuating circumstances, they could not. As the tenant had moved out on February 28, 2021 and otherwise accepted the end of the tenancy, they did not contact her about continuing her tenancy. The Purchaser rented the upstairs unit to Mr. S on April 10, 2021 for \$1,500.00 per month and the downstairs unit to Ms. C on April 15, 2021 for \$1,375.00 per month.

The Purchaser testified they did not need rental income to pay the mortgage on the rental unit. They have two children aged 4 ½ and 8 months and their family of four intended to move out of the residence they currently share with their mother and occupy the upstairs of the rental unit.

In their written submission, the Purchaser states their mother's health deteriorated shortly before the purchase of the rental unit was completed. In their testimony, they stated their mother's health was compromised due to surgery and they determined it would be better for their mother's health to remain living with her.

The Purchaser testified their mother's surgery was in 2019 and it was to replace her knee. The Purchasers submitted medical records. The onset of medical conditions listed on pages 1-2 cover May 2016 to February 2020 and indicate their mother had total knee replacement surgery in August 2018 and is under care for diabetes since April 2019. The Purchaser did not point to anything specific in the medical records that coincided with the timing of the purchase of the rental unit.

The Purchaser also testified RK's maternity leave was ending and she was due back at work on March 18, 2021. Their plan was for their mother to come to the rental unit to provide childcare when RK returned to work. However, due to the risk associated with exposing their mother to Covid-19, the Purchaser determined that it would be unsafe for their mother to travel to and from the rental unit.

In paragraph 40 of their written submission, the Purchaser states that with the spread of the Delta variant, Covid-19 was very active throughout the world in early 2021. The submission refers to exhibits D and E. Exhibit D includes an April 22, 2021 news release from the government of Canada related to the suspension of flights from AG's home country. Exhibit E is a September 21, 2021 news release on the same topic.

The Purchaser testified it would not be possible for them to take the children to their mother's residence for childcare due to their work schedules. They could not find an alternative for childcare due to the pandemic so they had to remain residing with their mother and could not occupy the rental unit.

Analysis

Pursuant to section 44(1)(a)(v) of the Act, I find the tenancy was lawfully ended by the January 23, 2021 Notice issued by the landlord pursuant to section 49(5) of the Act. The purpose for ending the tenancy was so that the Purchaser, or their close family members, could occupy the rental unit.

The Act provides a consequence for purchasers who do not occupy the rental unit after causing a tenancy to end for this purpose. Section 51(2) of the Act requires a purchaser pay compensation to a tenant if the purchaser does not accomplish the purpose for which the tenancy was ended within a reasonable period or has not used the rental unit for the stated purpose for at least six months. If I find the Purchaser experienced extenuating circumstances that prevented them from occupying the rental unit, pursuant to Section 51(3) of the Act, I may excuse them from paying compensation to the Tenant.

Section E, page 4 of [Policy Guideline 50](#) addresses extenuating circumstances. It notes that a change of mind is probably not extenuating circumstances. Extenuating circumstances are those that could not be anticipated and are beyond the control of the Purchaser.

The Purchaser did not provide an approximate or specific date they realized they could not occupy the rental unit. If there were circumstances occurring prior to January 23,

2021 that prevented the Purchasers from occupying the rental unit, the Purchasers could have notified the landlord or the Tenant that the rental unit no longer needed to be vacant for their possession on March 18, 2021 and the Tenant's tenancy could have continued.

To excuse the Purchaser from paying compensation to the Tenant for not occupying the rental unit, I rely on the date the Notice was issued, January 23, 2021, as the point in time after which the Purchaser's extenuating circumstances needed to occur to prevent them from occupying the rental unit.

The Purchaser's evidence supports the date of onset of their mother's poor health, which they tied to knee replacement surgery, to 2018 or 2019. The time span and content of the medical records indicate the Purchaser's mother's health problems significantly pre-date the contract to purchase the rental unit. Although the Purchaser claims their mother's health deteriorated at the time of the purchase of the rental unit, the Purchaser did not give details about how her health deteriorated or identify where in the medical records this was recorded.

I conclude the Purchaser knew of their mother's health challenges and her need for their continued support prior to making their plan to occupy the rental unit. The Purchaser did not present convincing evidence of a change in their mother's health or a specific event that occurred after January 23, 2021 that caused them to cancel their plan to occupy the rental unit due to their mother's deteriorating health.

I do not find there are extenuating circumstances related to the Purchaser's mother's health which prevented them from occupying the rental unit because the mother's health conditions pre-date January 23, 2021 and the Purchaser could have anticipated the support their mother would need if they moved out.

The Purchaser testified they needed their mother to continue to provide childcare after March 18, 2021, which was the date NK was due to return to work and the date they gained possession of the rental unit. In their written submission, the spread of Covid-19 Delta variant was cited as the extenuating circumstance that prevented their mother from leaving the safety of her home to travel to the rental unit to provide childcare.

Due to the age of their children, I conclude the Purchaser knew prior to January 23, 2021 that they needed a new plan for childcare once they moved out of the home they were sharing with their mother.

The BC government first declared a state of emergency related to the pandemic in March 2020 and the pandemic is ongoing. The evidence the Purchaser submitted about the increased risk of exposure to Covid-19 Delta variant relates to international travel and is dated after the new tenancies with Mr. S and Ms. C began. The Purchaser did not provide evidence of a change related to the pandemic between January 23, 2021 and the start of the new tenancies with Mr. S and Ms. C.

I conclude the Purchaser knew prior to January 23, 2021 that there is pandemic. I conclude the Purchaser knew there were risks associated with their mother traveling outside her home and could have anticipated that it would be difficult to secure an alternative childcare provider. I am not convinced by the testimony or documentary submission that a new, unanticipated risk associated with the pandemic occurred after January 23, 2021.

I do not find there are extenuating circumstances related the pandemic and childcare that prevented the Purchaser from occupying the rental unit because the Purchaser could have anticipated their childcare needs prior to January 23, 2021. The Purchaser did not identify specific circumstances or an event that occurred after January 23, 2021 that prevented their mother from traveling to the rental unit to provide childcare.

The Purchaser acknowledges they have not accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice and has failed to use the rental unit for the purpose for which the Notice was given. I find the Purchaser has been unsuccessful in demonstrating that, on a balance of probabilities, there were extenuating circumstances that prevented them from occupying the rental unit within a reasonable time after the effective date of the Notice. I do not excuse them from the compensation they are required to pay the Tenant pursuant to section 51(2) of the Act.

As the Tenant's application is successful, pursuant to section 72(1) of the Act, I find the Tenant is entitled to recover her filing fee from the Purchaser.

Conclusion

- 1) Pursuant to section 51 of the Act, I award the Tenant \$20,076.00 (12 x monthly rent of \$1673.00).
- 2) Pursuant to section 72 of the Act, I award the Tenant \$100.00.

I issue a monetary order to the Tenant for \$20,176.00. This order must be served on the Purchaser. If the Purchaser fails to comply with this order, the Tenant may file the order in Provincial Court (Small Claims) and have it 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: February 11, 2022

Residential Tenancy Branch