



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1219916 B.C. 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 money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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 provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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 to be Decided

Is the tenant entitled to a monetary order the equivalent of twelve months' rent as claimed?

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

Background and Evidence

The tenant gave the following testimony. The tenancy began on September 1, 2010 and had a monthly rent payable of \$1172.60 due on the first of each month. On March 31, 2021 the landlord served the tenant with a two month Notice to End Tenancy for Landlords' Use of Property. The Notice to End Tenancy required the tenant to move out of the rental unit by May 31, 2021. The ground for the Notice was:

- *The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

The tenant moved out of the rental but later discovered that the landlord did not move into the rental unit; instead found a listing that the unit was for rent in July 2021. The tenant testified that the landlord had ample opportunity to let him know that the renovation wasn't going to happen to his primary home and could have stayed until he was ready to do the work. The tenant requests 12 months rent as compensation.

The landlord gave the following testimony. The landlord testified that the intention was to have himself move into the unit while his primary home was going to have a significant renovation take place. The landlord testified that he bought the property on March 15, 2021 and didn't take possession of the property until the first week of June 2021. The landlord testified that he spent most of the month of June trying to arrange the tradespeople to do the work on his home. Over that month, the landlord realized that the labour shortage and escalating costs would not make the renovation process feasible at that time and decided to delay it to the summer of 2022. The landlord testified that he rented the unit out as of October 1, 2021.

Analysis

Section 51(1) of the Act requires that a landlord, who gives a notice under section 49, including the form of notice that is the subject of this application, must pay the tenant an amount equivalent to one month's rent. Section 51 (2) of the Act states as follows:

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement.

In the 2 Month Notice the reason provided for the tenancy to end is that the owner or a close family member will occupy the rental unit. In the landlord's own testimony, he acknowledges and concedes he did not act in accordance with the reason listed on the notice was. The landlord submits that extenuating circumstances of escalating costs and labour shortages is the reason why he did not comply with the reason on the notice for six months as required.

Section 51(3) provides that: 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 provides some examples of extenuating circumstances including death and wildfires. The Guideline specifically cites changing one's mind or failing to adequately budget to be examples of circumstances that may not be extenuating. An example provided of a situation that may be considered

extenuating is: A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies one month after moving in.

In the matter before me, the landlord states that the costs to renovate his primary home and the availability of tradespeople were the determining factor in not moving into the unit. The landlord does not dispute that he advertised the unit from early July 2021 and that there is an ongoing tenancy that began on October 1, 2021. I find that the circumstances before me do not meet the reasonable characterization of extenuating circumstances and consequently the landlord is not excused from their obligation under section 51(2) of the Act to pay the tenant an amount equivalent to 12 times the monthly rent of \$1172.60 in the amount of \$14,071.20.

The tenant is also entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The tenant has established a claim for \$14,171.20. I grant the tenant an order under section 67 for the balance due of \$14,171.20. This order may be filed in the Small Claims 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: February 10, 2022

Residential Tenancy Branch