



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1023998 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: MNDCT

Introduction

In this dispute, the tenant seeks compensation from their former landlord pursuant to sections 51(2) and 67 of the *Residential Tenancy Act* ("Act").

Attending the hearing was the tenant, the landlord's representative, and a witness for the tenant. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* (prohibition on recording the hearing) was explained.

Issue

Is the tenant entitled to compensation?

Background and Evidence

Relevant oral and documentary evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

Then tenancy began at the end of May 2019. It ended on February 26, 2021 when the tenant vacated the rental unit. Monthly rent was \$950.00. A copy of the written tenancy agreement was in evidence.

On October 22, 2020 the landlord gave the tenant a *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice"). The Notice, a copy of which is in evidence, stated that the effective end of tenancy date was December 31, 2020. The reason for the Notice was so that the landlord or a close family member of the landlord would occupy the rental unit. This is indicated on page two of the Notice.

The tenant disputed the Notice before the Residential Tenancy Branch. She was unsuccessful. In that hearing, the landlord gave evidence under oath regarding his intentions to occupy the rental unit. The relevant portion of the decision which reflects this evidence is on page two, at paragraph four, which reads:

The Landlord testified that they [. . .] decided to move to the city where this property is located to be the on-site building manager. The Landlord testified that they issued the Notice to the Tenant as they will be moving into this rental unit to manage the property. The Landlord testified that this specific rental unit had been chosen due to its location in the building.

The arbitrator in her decision of February 1, 2021 dismissed the tenant's application and upheld the Notice. An order of possession was granted to the landlord and the tenant vacated the rental unit on February 28, 2021. (The file number associated with this previous decision is referenced on the cover page of this decision.)

The evidence of the tenant, which included a diary and an affidavit of her witness FL (along with a photograph of FL attending to the rental unit after the tenancy had ended), established that the landlord did not move into the rental unit. The landlord's representative (the "landlord") did not dispute that he never moved into the rental unit.

The landlord gave evidence that the rental was not empty for several months as claimed by the tenant. Rather, it was occupied by electricians and other tradespeople doing repairs and renovations. A renovation permit was submitted into evidence. He further noted that he did not rent out the property before the six-month period was up.

There is in evidence a copy of an online advertisement for the rental unit. The ad indicates that the rental unit would be available August 1, 2021 and that monthly rent would be \$1,350.00. New tenants moved into and occupied the rental unit on July 31, 2021. There is a copy of a written tenancy agreement submitted by the landlord into evidence, though the tenancy start date on that agreement is for September 1, 2021.

The tenant seeks compensation under section 51(2) of the Act in the amount of \$11,400.00. In addition, the tenant seeks \$2,641.81 for two moving-related costs, \$2,076.00 for storage costs (she needed to store her property while she searched for seven months for a comparable and affordable new home), and \$54.35 in Canada Post-related expenses. A Monetary Order Worksheet along with supporting receipts (including financial statements showing payments made) were in evidence.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Compensation under section 51(2) of the Act

As a starting point, it is important to note that the Notice was given under section 49(3) of the Act, which is for “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.” It is also noted that the Notice was issued on October 22, 2020. As such, it is sections 51(2) and 51(3) of the Act that were in place at the time the Notice was given governs how the tenant’s application for compensation will be considered. (For reference, the version as it was in place is accessible in its entirety online at <https://canlii.ca/t/54bx3>.) Section 51(2) of the Act reads as follows:

- (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.

In this dispute, the effective date of the Notice was December 31, 2020. While neither party made any submissions as to what constitutes a “reasonable period,” it is reasonable to accept that the landlord had more than ample opportunity to move into and occupy the rental unit after the tenant vacated the rental unit on February 26, 2021.

The tenant argued that the landlord could have enforced the order of possession and moved in within days of February 1, 2021 but did not do so. Nor did the landlord appear to make any effort to occupy the rental unit after the tenant vacated.

Rather, he chose to renovate the rental unit and then rent it out to new tenants. The landlord's written submission sets this out (excerpt):

On March 16 2021 I returned [tenant] one month rent and her Damage deposit. Receipt is attached.

I then decided to renovate apartment # 5 in March 2021: Permit attached. It took until the end of June 2021 for the work to be completed: Inspection Certificate attached.

I had all the heating and electric wiring changed in the apartment. I also had to change the flooring and fix the drywall in the apartment. I hired Harry to do the work. It took until the end of Aug 2021. After the renovations were complete Harry and his wife wanted to rent out the apartment.

On September 1 2021, unit 5 was rented

Having electricians and other tradespersons in the rental unit between when the tenant vacated and when new tenants moved in does not by any stretch constitute "occupy" as contemplated by the Act. Rather, the purpose for ending a tenancy under section 49(3) is for a landlord or their close family member to "to use the rental unit as living accommodation or as part of their living space" (see *Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member*, version dated July 2021, p. 2).

February 26, 2021 to September 1, 2021 is a period of six months and six days. At no point during this period did the landlord make any attempt to occupy the rental unit as living accommodation for either him or his close family members. As such, it is my finding that the landlord did not satisfy either subsections 51(2)(a) or (b) of the Act and is thus prima facie liable to pay the tenant compensation under this section.

The landlord did not raise a defence of extenuating circumstances, but as per the Supreme Court's decision in *Furtado v. Maasanen*, 2020 BCSC 1340:

[. . .] if evidence of extenuating circumstances is presented, the adjudicator must consider it to determine whether those circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the Notice, the stated purpose for ending the tenancy.

In other words, I must consider whether there is any evidence of extenuating circumstances and, if so, whether those circumstances prevented the landlord from accomplishing, within a reasonable period after the effective date of the Notice, the stated purpose for ending the tenancy.

Section 51(3) of the Act reads as follows:

- (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.

In this dispute, there is no such evidence of any sort of extenuating circumstance. Nowhere in the landlord's testimony or written submissions did he provide a reason why he and his family did not move into and occupy the rental unit as stated in the Notice. Or, how he and his family were somehow prevented from moving into and occupying the rental unit. And at no point did the landlord explain why he testified, under oath, in the previous hearing before a different arbitrator that he intended to move into the rental unit but then decided not to do so after the Notice was upheld.

It is thus my finding that there existed no extenuating circumstances that prevented the landlord from either accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or, from 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.

The landlord must therefore, pursuant to section 51(2) of the Act, pay the tenant an amount that is the equivalent of twelve times the monthly rent payable under the tenancy agreement, in the amount of \$11,400.00.

2. Claim for Remaining Compensation

Section 67 of the Act states that

Without limiting the general authority in section 62 (3) [. . .], 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.

The landlord neither accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice nor used the rental unit for the stated purpose for at least six months' duration beginning within a reasonable period after the effective date of the notice. As such, the landlord breached section 51(2) of the Act, and as noted there are no extenuating circumstances that exculpate the landlord from liability under this section.

I see no reason why the tenant cannot claim for additional compensation arising from the landlord's breach of this section of the Act; section 51(2) does not preclude additional compensation being awarded and nowhere in the Act is a tenant limited to the twelve months' compensation award.

But for the landlord's breach, the tenant would not have had to incur moving and storage losses. And it is also my finding that the amounts claimed for moving and storage costs are reasonable in the circumstances. Last, it is worth noting that the landlord did not dispute, or otherwise make any counterargument against, this aspect of the tenant's application.

As such, taking into consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has discharged her onus of proving her claim for compensation for the cost of what amounted to forced moving and storage costs in the amount of \$ 4,717.81. The landlord is hereby ordered under section 67 of the Act to pay the tenant this amount.

In respect of the claim for \$54.35 for Canada Post registered mail expenses, this minor claim cannot be considered, as they relate to costs of litigation for which no compensation can be awarded under the Act. As such, this claim is dismissed, without leave to reapply.

Conclusion

The application is granted.

The tenant is granted a monetary order in the amount of \$16,317.81. A copy of this order is issued in conjunction with this decision to the tenant. The tenant must serve this order on the landlord by any method of service permitted under section 88 of the Act.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal the decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: February 23, 2022

Residential Tenancy Branch