



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC

Introduction

On August 3, 2021, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “Act”).

Both Tenants and both Landlords attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could 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.

Tenant J.S. advised that they served a Notice of Hearing and evidence package to each Landlord by registered mail on or around August 18, 2021, and the Landlords confirmed receiving these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were duly served the Notice of Hearing and evidence packages. As such, this evidence was accepted and will be considered when rendering this Decision.

Landlord A.G. was unsure if their evidence was served to the Tenants. J.S. confirmed that they received the Landlords’ evidence over a week prior to the hearing. As this evidence appears to have been received by the Tenants pursuant to the timeframe requirements of Rule 3.15 of the Rules of Procedure (the “Rules”), this evidence was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 1, 2018 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on June 30, 2021 after being served the Notice. Rent was established at \$1,045.00 per month and was due on the first day of each month. A security deposit of \$497.50 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

As well, all parties also agreed that the Tenants were served the Notice on or around June 10, 2021. The Notice was served by the previous landlord because "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." The Landlords' names were noted on the purchaser information of the Notice. As well, it was indicated on the Notice that the effective end date of the tenancy was August 31, 2021.

A.G. confirmed that they had the previous landlord serve the Notice as it was their intention, prior to when the Notice was served, to have M.G. live in the rental unit. As they were the purchasers, they had no relationship with the Tenants. She advised that they were stressed due to a personal relationship matter with M.G. They moved into the upstairs of the property while the Tenants still occupied the rental unit. She testified that they were later advised by their realtor that the Tenants had given their 10 day's notice to end their tenancy early, effective for June 30, 2021. She stated that they were informed prior that the Tenants were planning on moving out anyways as the rental unit was not suitable for their growing family. Regardless, A.G. and M.G. had worked out their personal differences, so it was no longer necessary for M.G. to occupy the rental unit. They briefly used the rental unit for storage, and they then re-rented the rental unit to a new tenant on August 15, 2021.

They were not aware of the requirement to occupy the rental unit for at least six months, and A.G. claimed that they were poorly informed by their realtor. She stated that they did not have any extenuating circumstances that prevented them from using the rental unit for the stated purpose on the Notice. It is their position that the Tenants should not be entitled to any compensation because the Tenants had the intention of leaving the rental unit anyways.

J.S. advised that after they received the Notice, they started looking for a new place. Once they found a new place to live, they gave their 10 day's written notice to leave early on June 18, 2021, effective for June 30, 2021, which was their right under the *Act*. She referenced documentary evidence submitted to support their position that the Landlords did not use the property for the stated purpose. As such, they are seeking compensation in the amount of **\$12,540.00** pursuant to Section 51 of the *Act*.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where all of the conditions of the sale have been satisfied and the purchaser asks the seller, in writing, to give the Notice because the purchaser intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The first issue I must consider is the validity of the Notice. When reviewing the consistent and undisputed evidence before me, I am satisfied that the Landlords requested that the seller of the rental unit give the Notice because the Landlords wanted to occupy the rental unit. As such, I find that this was a valid Notice.

The second issue I must consider is the Tenants' claim for twelve-months' compensation owed to them as the Landlords did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated June 9, 2021 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

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.*

At the time the Notice was served, the Landlords advised that the intention was for M.G. to move into the rental unit and that the Notice was served in good faith. There is no doubt that this may have been the case; however, the good faith requirement ended once the Notice was accepted by the Tenants and after they gave up vacant possession of the rental unit. What I have to consider now is whether the Landlords followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Furthermore, the burden for proving this is on the Landlord, as established in *Richardson v. Assn. of Professional Engineers (British Columbia)*, 1989 CanLII 7284 (B.C.S.C.).

With respect to this situation, Policy Guideline # 2A states that “The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).”

As well, Policy Guideline # 50 states the following:

Sections 51(2) and 51.4(4) of the RTA are clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 or section 49.2 and do not accomplish the stated purpose for ending the tenancy within a reasonable period or use the rental unit for that stated purpose for at least 6 months.

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy. For instance, if a landlord gives a notice to end tenancy under section 49, and the stated reason on the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit for at least 6 months. A landlord cannot convert the rental unit for non-residential use instead. Similarly, if a section 49.2 order is granted for renovations and repairs, a landlord cannot decide to forego doing the renovation and repair work and move into the unit instead.

A landlord cannot end a tenancy for the stated purpose of occupying the rental unit, and then re-rent the rental unit to a new tenant without occupying the rental unit for at least 6 months.

Finally, Policy Guideline # 50 outlines the following about 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.

When reviewing the totality of the evidence before me, I am satisfied that the reason on the Notice was for the rental unit to be occupied by the “purchaser or close family member” only. While the undisputed evidence is that Landlords briefly moved into the rental unit at the end of July 2021, they then re-rented it on August 15, 2021, which was even prior to the effective date of the Notice. As the rental unit was clearly not occupied for the stated purpose for at least six months after the effective date of the Notice, I am satisfied that the Landlords have failed to use the rental unit as per the *Act*, and the only thing I must consider now are extenuating circumstances.

However, A.G. advised that there were no extenuating circumstances that prevented the Landlords from using the rental unit for the stated purpose for at least six months after the effective date of the Notice. I do not accept their claims that they were not aware of the requirements of the *Act* to be a justification for not complying with the *Act*. This information is clearly stated on the Notice, and it is the Landlords responsibility to understand their rights and obligations under the *Act*. While they claimed to have been misinformed by their realtor, they may want to seek legal advice to determine if there is any legal recourse for this.

Regardless, as I am satisfied that there were not any unforeseen or extenuating circumstances that prevented the Landlords from using the rental unit for the stated purpose for at least six months after the effective date of the Notice, I find that the Tenants are entitled to a monetary award of 12 months’ rent pursuant to Section 51 of the *Act*, in the amount of **\$12,540.00**.

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$12,540.00** 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: February 16, 2022

Residential Tenancy Branch