



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 210044111

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

Melanie Blunden, Tenant(s),

Applicant(s)

And

Tara Jarvis, Landlord(s),

Respondent(s)

Regarding a rental unit at: (Basement) 902 Jonathan drive, Penticton, BC

Date of Hearing: February 7, 2022, by conference call.

Date of Decision: February 7, 2022

Attending:

For the Landlord: Tara Jarvis

For the Tenant: Melanie Blunden



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNETC, FFT**

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree about the background facts in this matter. This periodic tenancy began in June, 2020. The monthly rent was \$1,450.00 payable on the first of each month. There was a security deposit of \$725.00 which was fully dealt with in accordance with the *Act*.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated May 31, 2021 with an effective date of July 31, 2021. The reason provided on the notice for the tenancy to end is that: All of the conditions for 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. The contact information of the purchasers is provided on the 2 Month Notice.

The landlord submits that the sale of the rental property closed on July 6, 2021 with title to the property and the tenancy agreement being transferred to the purchasers on that date. Copies of the Statement of Adjustments and Discharge Letters were submitted into documentary evidence by the parties. The security deposit for this tenancy is noted as a Credit to the purchasers in the Statement of Adjustments.

The tenant submits that they gave the landlord written notice to end the tenancy earlier than the effective date of the notice by a letter sent on June 28, 2021. The letter gives an end of tenancy date of July 12, 2021. The landlord informed the tenant that the tenancy had transferred to the new owners and advised them to send the notice to them.

The tenant submits that they vacated the rental unit on July 12, 2021 and now seek a monetary award in the amount equivalent to one month's rent pursuant to section 51(1) of the *Act*, less the amount of the pro-rated rent for the month of July 2021. The tenant calculates the amount owing to be \$935.40.

The landlord submits that the tenancy was transferred to the purchasers as of July 6, 2021 and they had no authority to accept the tenant's notice to end tenancy nor obligation to provide the tenant with compensation pursuant to the *Act*.

The purchasers did not attend this hearing. The tenant gave evidence that the purchasers were made aware of the dispute. Included in the tenant's evidence is correspondence from the purchasers to the tenant confirming their knowledge of the tenant's application for dispute resolution. The tenant did not provide evidence that the purchasers were served with copies of the application for dispute resolution or the evidentiary materials.

Analysis

Section 51(1) of the Act provides that:

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.

Landlord is defined in section 1 as including:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- ...
- (d) a former landlord, when the context requires this;

I am satisfied with the evidence of the parties that title to the rental property and the tenancy agreement was transferred to the purchasers on July 6, 2021. The Statement of Adjustments shows that the purchasers were credited the amount of the security deposit for this tenancy. I find this to be clear evidence that the purchaser assumed the tenancy and their obligation to hold the security deposit until the tenancy ended. The purchasers also assumed the obligations of a landlord under the Act to provide the equivalent of one month's rent payable under the tenancy agreement.

While the respondent in this matter was the landlord under the tenancy agreement until July 6, 2021 and is a former landlord, I find that under the circumstances it would be

unfair and unjust to consider them a landlord against whom the tenant may now seek a monetary award for the equivalent of one month's rent pursuant to section 51(1).

The evidence of the tenant is that they mailed their written notice to end the tenancy on June 28, 2021. Pursuant to section 90(a) a document served by mail is deemed served on the fifth day after it is mailed, in this case on July 3, 2021. Therefore, while the landlord was served with the tenant's notice on July 3, 2021, I find it was the purchasers who took possession of the rental unit on July 6, 2021 who assumed all of the duties pertaining to the end of the tenancy including payment to the tenant pursuant to section 51(1). The undisputed evidence is that the purchasers handled the return of the security deposit to the tenant. Based on the evidence I find the purchasers assumed the tenancy until it was ended in accordance with the Act.

I find that as of July 6, 2021 the purchasers assumed the tenancy including any obligation to provide the tenant compensation under section 51, just as they fulfilled their obligation as landlords to return the security deposit to the tenant. I find it would be inconsistent for a purchaser to assume some of the duties of the tenancy such as holding the security deposit while being shielded from other responsibilities under the *Act*.

The respondent landlord provided compensation by allowing the tenant to withhold the monthly rent payable on July 1, 2021 pursuant to section 51(1.1). I find no further obligation on the landlord to provide compensation under the *Act* after the sale of the rental property has concluded. I find this to be a circumstance where it would be inequitable and unfair to include a former landlord in the definition of landlord against whom the tenant may seek compensation.

Neither party made any application to add the purchasers as a party to the present proceeding. While Residential Tenancy Rule of Procedure 7.13 allows me to unilaterally determine that an additional person should be added as a party to a dispute resolution proceeding, I do not find this to be a situation where the adding of a party to the present application is appropriate. I have made a determination on the matter before me, whether the tenant is entitled to compensation from the named respondent landlord.

I dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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 7, 2022

Residential Tenancy Branch