Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

On August 10, 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*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing. The Landlord attended the hearing as well, with F.H. attending as her agent and translator. A.M. attended the hearing as a former agent of the Landlord. 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.

A.M. advised that he was a property manager for the Landlord and that the contract between his company and the Landlord ended when the tenancy ended on June 30, 2021. As such, his company no longer has any responsibility over this tenancy and should be removed as a Respondent on this Application. The Landlord confirmed that the business relationship with this property management company ended on June 30, 2021. Given this undisputed testimony, I am satisfied that the property management company was mistakenly named as a Respondent on this Application. As such, I have amended the Style of Cause on the first page of this Decision to reflect this change.

Tenant D.B. advised that they served the Notice of Hearing and evidence package to the Landlord by registered mail on or around August 26, 2021, and the Landlord confirmed receiving this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. As such, this evidence was accepted and will be considered when rendering this Decision.

The Landlord advised that she served the Tenants her evidence on or around November 16, 2021 by registered mail, and D.B. confirmed that they received the Landlord's evidence. As this evidence was 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")?
- Are the Tenants entitled to recover the filing fee?

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 September 4, 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 $1,230.00 per month and was due on the first day of each month. A security deposit of $600.00 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 April 26, 2021. The Notice was served by the property management company, as

instructed by the Landlord, because “The rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child, or the parent or child of that individual’s spouse)”. As well, the Landlord indicated that it would be “The Landlord or the Landlord’s spouse” that would be occupying the rental unit. It was indicated on the Notice that the effective end date of the tenancy was June 30, 2021.

Through F.H., the Landlord advised that her son asked to move in with her in April 2021, and as there was not enough working space in her area of the property, she requested that the property manager serve the Notice so that her son could occupy the rental unit. She testified that her son arrived on June 20, 2021 and moved into the rental unit on July 1, 2021.

During a visit to Vancouver between July 6 - 14, 2021, she stated that she “accidentally found” a two-million-dollar condominium that she put an offer in on. However, it was determined that she was unable to obtain a mortgage for this condominium unless she sold the property which included the rental unit. She listed her property for sale on or around July 28, 2021 and moved out of it on September 30, 2021. She purchased the condominium on July 14, 2021.

She claimed that her extenuating circumstance for not using the rental unit for at least six months pursuant to the Notice was because she was surprised that the bank would not provide her with a mortgage on the condominium unless she sold her other property. As a result, she had no choice and was forced to sell it to meet the deadline in order to purchase the condominium. She stated that she wanted to keep both properties and had no intention of selling the one property when the Notice was served. In addition, she stated that she was a new immigrant and was not aware that she would be unable to obtain the mortgage for the condominium.

D.B. advised that the Landlord purchasing another property demonstrates that it was likely not her intention to use the rental unit for the stated purpose. Furthermore, changing her mind is not an extenuating circumstance.

Tenant M.A. advised that based on a BC Assessment report of the property, the Landlord’s useable space upstairs above them was approximately 2,700 square feet in comparison to the Landlord’s new condominium of 1,300 square feet. As well, he indicated that according to the report, the property sold on August 13, 2021.

As the Landlord did not use the property for the stated purpose for at least six months after the effective date of the Notice, they are seeking compensation in the amount of **$14,760.00** 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 the Landlord, or a close family member of the Landlord, 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 Landlord requested that the property manager serve the Notice on her behalf because she wanted her son 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 Landlord did not use the property for the stated purpose on the Notice. I find it important to note that the Notice was dated April 26, 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*
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> > *(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 Landlord advised that the intention was for her son to move into the rental unit and that the Notice was served in good faith. I have some doubts that this may have been the case, regardless, 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 Landlord 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.
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> 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.
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> 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 additional compensation if there were extenuating circumstances that stopped the landlord from accomplishing the stated purpose within a reasonable period, from using the rental unit for at least 6 months, or from complying with the right of first refusal requirements. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. 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 Landlord or close family member only. While the undisputed evidence is that Landlord's son briefly moved into the rental unit at the beginning of July 2021, she then sold the entire property sometime between August 13 and September 30, 2021. 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 Landlord has failed to use the rental unit as per the *Act*, and the only thing I must consider now are extenuating circumstances.

When considering the totality of the Landlord's submissions, I am not satisfied that any of them would constitute extenuating circumstances. The sole reason she sold the property, including the rental unit, was because she wanted to purchase another property. This desire initiated the sequence of events which required her to sell the one property; however, I do not accept that this scenario could not be anticipated or was outside the Landlord's control. After discovering that she did not qualify for the mortgage for the condominium, she could have easily elected not the buy it until after she had used the rental unit for the six-month timeframe. Rather, she wanted to purchase the

condominium and thus, chose to sell the property instead. Clearly this was all within the Landlord's control and was predicated on the Landlord simply wanting to own the condominium.

Consequently, there is no doubt that that there were no unforeseen or extenuating circumstances that prevented the Landlord from using the rental unit for the stated purpose for at least six months after the effective date of the Notice. As such, 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 **$14,760.00**.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$14,860.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 22, 2022

Residential Tenancy Branch