



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNETC FFT

Introduction

The tenants seek compensation pursuant to section 51(2) of the *Residential Tenancy Act* ("Act"). In addition, they seek recovery of the filing fee under section 72 of the Act.

Both parties attended the hearing on February 11, 2022. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained. The landlord S.N.'s last name has been corrected on the style of cause (cover page).

It should be noted that the landlord K.B., while having submitted three PDF documents to the Residential Tenancy Branch's online dispute management system, did not end up serving copies of these documents on the tenants. As this documentary evidence was not served in compliance with *Rules of Procedures*, specifically Rule 3.15, which requires a respondent to serve copies of their evidence on the applicant. For this reason, I cannot consider the landlord K.B.'s documentary evidence.

Issue

Are the tenants entitled to compensation?

Background and Evidence

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

The tenants seek \$26,400.00 in compensation under section 51(2) of the Act. In their written submission, they also claimed \$1,500.00 in moving costs. Because no invoices or receipts for the moving costs were submitted into evidence, I explained that this aspect of the tenants' claim would not be considered.

The tenancy began on February 1, 2020 and ended on June 30, 2021. Monthly rent was \$2,200.00. A copy of the written tenancy agreement was submitted into evidence.

On April 28, 2021, the tenants' landlord (hereafter the "former landlord" or "seller", and who is not a party to this application) issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") after receiving instructions from the landlords (hereafter the "purchasers," "purchaser," or "landlord") that they, the purchasers, intended in good faith to occupy the rental unit.

Submitted into evidence is a copy of the Notice, and the second page of the Notice includes the name of a purchaser ("G.S.M."). The reason for the Notice being issued was checked off as being "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 unit."

A copy of the purchaser's written request for the seller to issue an eviction notice was attached to the Notice and was submitted into evidence. This document, titled *Tenant Occupied Property - Buyers Notice to Seller for Vacant Possession* (the "Buyers Notice") was executed on February 25, 2021 by K.B. and S.N., the two landlords (and purchasers) named as respondents in this dispute. Respondent K.B. explained that the purchaser G.S.M. listed on the Notice assigned the purchase to him and S.N. G.S.M. is no longer in the picture as it relates to this matter.

Not long after the tenants vacated the rental unit, which is a duplex, a "friend of a friend," or, a friend of the applicant K.M. ended up moving in and renting the rental unit. This friend contacted the applicants around July 25, 2021, advising them that they had some of their mail. This friend has continued to reside in the rental unit ever since.

The respondent landlord K.B. testified that while he was one of the parties intending to purchase the property and had every intention of fulfilling his dream of owning the property, his application for a mortgage was eventually declined. He wanted to add his wife to the contract, but she too was not approved for a mortgage. Further back and forth occurred between K.B. and the bank and by June 26 he had to have his name removed from the contract of purchase and sale. His name was removed, and the respondent S.N.'s wife name was added.

Respondent S.N. is 76 years old and K.B. continued to help him out, as S.N. "cannot handle the rental property." He "had to put the property on the market."

K.B. testified that he had always intended in good faith to move into the rental unit, but circumstances changed. It was never his intention to cause difficulty for the tenants.

Respondent S.N. testified that everything K.B. spoke about had happened. He had to take over after K.B. was denied a mortgage. The rental unit itself was “empty the whole month of July” but by August the landlord rented it out. He, too, never had “any intention to give anybody a hard time.”

In rebuttal, the tenants testified that the respondents’ stories about what happened “just doesn’t add up.” They find it odd that the landlords somehow intended to move into the rental unit all the way up to June 26. This intention is reflected in email correspondence from the two realtors. Further, the tenants dispute the landlord’s assertion that the rental unit sat empty all of July: they were contacted on or about July 23, regarding the tenants’ mail.

In his rebuttal, the respondent K.B. noted that some appliances had been added to the rental unit and other work done, which resulted in the rental unit being rented out to a new tenant at \$2,700.00.

At the end of the hearing the parties briefly discussed settlement. However, this was for naught, and the parties explained that they would leave the matter for my determination.

Analysis

The tenants seek compensation under [section 51\(2\)](#) of the Act, which states that

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 the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49(6)(a), has been used for that stated purpose for at least 6 months’ duration, beginning within a reasonable period after the effective date of the notice.

And subsection (3) of the Act reads as follows:

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 applicable, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
- (b) using the rental unit, except in respect of the purpose specified in section 49(6)(a), 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 tenants' former landlord issued the Notice under [section 49\(5\)](#) of the Act. This section states that

A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

Purchasers K.B. and S.N. provided the request under subsection 49(5)(c)(i) and there is no dispute that the requirements under subsections 49(5)(a) through (c) were met.

Based on the evidence before me, it is my finding that the landlords have not established that the stated purpose for ending the tenancy (that is, so that the purchasers could occupy the rental unit) was accomplished within a reasonable period after the effective date of the Notice (June 30, 2021).

Nor, I find, have they established that the rental unit has been used for the stated purpose for at least six months after the effective date of the Notice. Indeed, the purchasers (the landlords) permitted a new tenant to move into the rental less than a month after the tenants vacated on June 30. That tenant still resides in the rental unit.

Next, while the respondent S.N. did explicitly raised the defence of extenuating circumstances, as per the Supreme Court of British Columbia's recent decision in *Furtado v. Maasanen*, 2020 BCSC 1340, the Court stated that

[. . .] 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.

K.B.'s explanation that his application for a mortgage was denied is, I find, an extenuating circumstance that prevented him, as a purchaser, from accomplishing the stated purpose for ending the tenancy. That his name appears on the early contract documents, coupled with his testimony about his "dream" to own property (and plans on moving to the property in Kelowna), persuade me that he had every intention of purchasing the rental unit and occupying it. His repeated efforts at obtaining a mortgage failed, however, and his name was ultimately removed from the contract of purchase and sale.

For these reasons, then, respondent K.B. is excused from paying the tenants the amount required under subsection 52(2) of the Act.

In respect of respondent S.N., no testimony or evidence of any kind was provided which might lead me to make a finding that there were extenuating circumstances which prevented him, as a purchaser, from accomplishing the stated purposes for ending the tenancy. By all accounts, neither he nor his wife (whose name was added onto the contract of purchase sale days before the tenants moved out) ever moved into and occupied the rental. Nor did any close family member occupy the rental unit. The rental has been rented out to an unrelated third party who, since July 2021, pays \$500 more per month than what the tenants were paying. In summary, I must conclude that there existed no extenuating circumstances that prevented the purchaser S.N. from accomplishing the stated purpose for ending the tenancy and from using the rental unit for the stated purpose for at least six months after the effective date of the Notice.

Taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for compensation under section 51(2) against the respondent landlord S.N. in the amount of \$26,400.00.

Section 72 of the Act permits an arbitrator to order compensation for the cost of the filing fee to a successful applicant. As the tenants succeeded in their application, they are awarded \$100.00 to pay for the cost of their application filing fee.

The tenants are granted a monetary order in the amount of \$26,500.00. A copy of this monetary order is issued in conjunction with this decision to the tenants. They are responsible for serving a copy of this order on the respondent S.M. If the respondent S.M. fails to pay the tenants the amount owed, the tenants may file and enforce the order in the Provincial Court of British Columbia. Last, it should be noted while the monetary order shall include both respondents' names, it is only the respondent S.M. who is required to pay the above-noted amount.

Conclusion

The tenants' application is granted.

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 this decision is limited to those 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 14, 2022

Residential Tenancy Branch