



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, MNETC, AND FFT

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on September 10, 2021 the Dispute Resolution Package, evidence submitted to the Residential Tenancy Branch on August 18, 2021, and evidence that was submitted to the Residential Tenancy Branch on September 10, 2021 was sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenants submitted Canada Post documentation that corroborates this testimony.

The Tenant stated that the documents sent to the Landlord on September 10, 2021 were returned to the Tenants by Canada Post. As these documents were not received by the Landlord, they were not accepted as evidence for these proceedings.

The Tenant stated that on October 26, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on October 26, 2021 was sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenants submitted Canada Post documentation that corroborates this testimony. The Co-owner of the rental unit acknowledged receipt of these documents.

As the Landlord acknowledged receiving the Application for Dispute Resolution and the evidence that was sent on October 26, 2021, that evidence package was accepted as evidence for these proceedings.

On August 24, 2021 and August 26, 2021, the Tenants submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord by registered mail. He stated that he does not recall the date it was served but it was not served with the documents mailed on September 10, 2021 or October 26, 2021. The Tenant stated that he does not recall the date this evidence was served as he does not have receipts for these mailings. The Co-owner of the rental unit stated that the only evidence received from the Tenants was the evidence that was mailed on October 26, 2021.

I find that the Tenants have submitted insufficient evidence to establish that the evidence they submitted to the Residential Tenancy Branch on August 24, 2021 and August 26, 2021 was mailed to the Landlord. In reaching this conclusion I was heavily influenced by the fact Canada Post documentation in regard to these packages was not submitted in evidence and the Tenant did not have a copy of that documentation with him at the time of the hearing. As the Tenants have submitted insufficient evidence to establish that this evidence was served and the Landlord did not acknowledge receipt of the evidence, these evidence packages were not accepted as evidence for these proceedings.

On September 23, 2021, the Tenants submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord by registered mail on September 23, 2021. The Tenant stated that he does not have a copy of that registered mail receipt with him, but he believes it was submitted to the Residential Tenancy Branch. The Co-owner of the rental unit stated that the only evidence received from the Tenants was the evidence that was mailed on October 26, 2021.

I find that the Tenants have submitted insufficient evidence to establish that the evidence they submitted to the Residential Tenancy Branch on September 23, 2021 was mailed to the Landlord. In reaching this conclusion I was unable to locate Canada Post documentation in regard to these packages in the documents submitted to the Residential Tenancy Branch and the Tenant did not have a copy of that documentation with him at the time of the hearing. As the Tenants have submitted insufficient evidence to establish that this evidence was served and the Landlord did not acknowledge receipt

of the evidence, the evidence package submitted on September 23, 2021 was not accepted as evidence for these proceedings.

On October 13, 2021, the Tenants submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord by registered mail on October 13, 2021. The Tenant stated that he does not have a copy of that registered mail receipt with him, but he believes it was submitted to the Residential Tenancy Branch. The Co-owner of the rental unit stated that the only evidence received from the Tenants was the evidence that was mailed on October 26, 2021.

I find that the Tenants have submitted insufficient evidence to establish that the evidence they submitted to the Residential Tenancy Branch on October 13, 2021 was mailed to the Landlord. In reaching this conclusion I was unable to locate Canada Post documentation in regard to this package in the documents submitted to the Residential Tenancy Branch and the Tenant did not have a copy of that documentation with him at the time of the hearing. As the Tenants have submitted insufficient evidence to establish that this evidence was served and the Landlord did not acknowledge receipt of the evidence, the evidence package submitted on October 13, 2021 was not accepted as evidence for these proceedings.

On November 29, 2021, the Tenants submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord by registered mail on November 29, 2021. The Tenant stated that he does not have a copy of that registered mail receipt with him, but he believes it was submitted to the Residential Tenancy Branch.

I find that the Tenants have submitted insufficient evidence to establish that the evidence they submitted to the Residential Tenancy Branch on November 29, 2021 was mailed to the Landlord. In reaching this conclusion I was unable to locate Canada Post documentation in regard to this package in the documents submitted to the Residential Tenancy Branch and the Tenant did not have a copy of that documentation with him at the time of the hearing. As the Tenants have submitted insufficient evidence to establish that this evidence was served and the Landlord did not acknowledge receipt of the evidence, the evidence package submitted on November 29, 2021 was not accepted as evidence for these proceedings.

The Tenant was advised that he may refer to any of the documents he submitted to the Residential Tenancy Branch during the hearing through oral testimony but I would not be physically viewing any of the documents that have not been accepted as evidence for the proceedings.

On December 07, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Co-owner of the rental unit stated that this evidence was served to the Tenants, via registered mail, on December 07, 2021. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 03, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Co-owner of the rental unit stated that this evidence was served to the Tenants, via email, on January 03, 2022. As the Tenant acknowledged receiving this evidence, I find that it was sufficiently served to the Tenants and it was accepted as evidence for these proceedings.

On January 26, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Co-owner of the rental unit stated that this evidence was served to the Tenants, via email, on January 26, 2022. As the Tenant acknowledged receiving this evidence, I find that it was sufficiently served to the Tenants and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Residential Tenancy Act (Act)*, because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?

Are the Tenants entitled to compensation for costs related to moving?

Background and Evidence

The Tenant stated that this tenancy began in 2016.

The Landlord and the Tenant agree that:

- The Landlord and the Co-owner of the rental unit purchased the property during this tenancy;
- The completion date of the sale was July 29, 2021;
- The Tenants vacated the rental unit on July 30, 2021; and
- At the end of the tenancy the Tenants were paying monthly rent of \$1,500.00.

The Tenant stated that on May 25, 2021 a Two Month Notice to End Tenancy for Landlord's Use was personally served to his wife by a realtor. The Co-owner of the rental unit stated that he does not know the service details, but he understands a Two Month Notice to End Tenancy for Landlord's Use was served to the Tenants.

The Landlord and the Tenant agree that the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by July 31, 2021 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 unit. The parties agree that the Two Month Notice to End Tenancy for Landlord's Use is signed by the Tenants' former landlord.

The Co-owner of the rental unit stated that the Landlord asked that the Two Month Notice to End Tenancy for Landlord's Use be served to the Tenants because the Landlord and the Co-owner intended to move into the rental unit.

The Co-owner of the rental unit stated that neither the Landlord nor a close family member of the Landlord moved into the rental unit. He stated that the Landlord began advertising the rental unit on August 02, 2021 or August 03, 2021 and that the unit was rented to a third party on August 28, 2021. The Tenant stated that he first saw the rental unit advertised on August 02, 2021.

The Co-owner stated that they did not move into the rental unit for financial reasons. In support of this submission the stated that:

- They are currently paying monthly rent of \$1,300.00;

- The mortgage payment on the rental unit is \$2,026.00 plus a strata fee of \$355.00;
- They must also pay property taxes and insurance for the rental unit;
- He lost his job on July 23, 2021;
- The Record of Employment submitted in evidence shows he quit his job, however he quit his job because his employer told him he would be fired if he did not quit;
- He is still unemployed;
- The Landlord was laid off on May 18, 2021;
- The Record of Employment submitted in evidence shows that the Landlord was laid off;
- The Landlord did not return to work and is currently on maternity leave, as she gave birth in December of 2021; and
- The Landlord was diagnosed with mental health issues in 2020 and the added financial stress would have impacted her mental health.

In response to the submissions made by the Landlord, the Tenant stated that:

- There is no evidence to support the Co-owner's submission that he was to be fired if he did not quit his job;
- The Co-owner should not have quit his job; and
- He spoke with someone at the Co-owner's previous place of employment and was told that the Tenant quit his job.

The Co-owner and the Tenant agree that the Co-owner told the Tenants that they could remain in the rental unit if they agreed to pay increased rent of \$150.00 per month.

The Co-owner stated that this offer was made because the Landlord concluded that the unit needed painting and the carpet in the unit needed replacing.

The Tenant stated that the offer for the Tenants to remain in the rental unit was made prior to the Two Month Notice to End Tenancy for Landlord's Use being served to the Tenants. The Co-owner stated that he does not recall if the offer to remain in the rental unit was made before or after the Two Month Notice to End Tenancy for Landlord's Use was served, as he does not know when it was served.

The Co-owner stated that an Order requiring the Landlord to pay compensation to the Tenants will be very difficult for the Landlord, as she and the Co-owner are currently unemployed and they have the added expense of a newborn child.

The Tenants are seeking compensation for moving costs, including costs of temporary accommodation and ferry costs, in the amount of \$2,154.37.

The Tenant acknowledged that they received the equivalent of \$1,500.00 in compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use.

Analysis

In the absence of evidence to the contrary, I find that the Tenants were paying monthly rent of \$1,500.00 when this tenancy ended.

On the basis of the undisputed evidence, I find that on May 25, 2021 the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use, pursuant to section 49 of the *Act*, which required them to vacate the rental unit by July 31, 2021 because all of the conditions for the sale of the rental unit had been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intended in good faith to occupy the rental unit. On the basis of the undisputed evidence, I find that the rental unit was vacated on July 30, 2021 in accordance with the Two Month Notice to End Tenancy for Landlord's Use.

On the basis of the undisputed evidence, I find that the neither the Landlord nor a close family member moved into the rental unit and that it was re-rented to a third party of August 28, 2021.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the Landlord must pay the Tenant an amount that is the equivalent of 12 times the monthly rent.

Section 51(3) of the *Act* enables me to 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 my opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy,

and 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.

Residential Tenancy Branch Policy Guideline #50, with which I concur, reads, in part:

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 one month after 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 did not notify the landlord of a further change of address after they moved out so they did not receive the notice and new tenancy agreement.*

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy the rental unit and then changes their mind.*
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for the renovations and cannot complete them because they run out of funds.*

I find that the Landlord has failed to establish that they should be excused from paying additional compensation to the Tenants pursuant to section 51(3) of the Act.

Although I accept that the Co-owner stopped working on July 23, 2021, I find that the Landlord has submitted insufficient evidence to establish that he stopped working for reasons that were beyond his control. In reaching this conclusion I was heavily influenced by the absence of any evidence, such as a letter from his employer, that corroborates the Co-owner's testimony that he would have been fired if he did not quit his job. I find the most reliable evidence before me is the Record of Employment, which clearly shows that the Co-owner quit his job. I find that deciding to quit working was a decision that was within the control of the Co-owner.

As there is insufficient evidence to conclude that the Co-owner lost his job for reasons that were beyond his control, I cannot conclude that the subsequent loss of income constitutes extenuating circumstances that prevented the Landlord from moving into the rental unit.

I considered the evidence that shows the Landlord began advertising the rental unit on August 02, 2021, which is only nine days after the Co-owner stopped working on July 23, 2021. Choosing to re-rent the unit without taking a reasonable amount of time to find alternate employment suggests, to me, that the Landlord did not make reasonable efforts to mitigate the financial impact the Co-owner's loss of employment had on the Landlord's finances.

The evidence shows that the Co-owner is still unemployed. I find it unreasonable, given the current labor market, to conclude that the Co-owner could not, with reasonable diligence, find some other form of employment. Even if the new employment paid minimum wage, that income would undoubtedly offset the difference in the amount the Landlord was collecting for rent and the amount she was paying to rent the home she was living in.

Even if the Co-owner lost his job for reasons beyond his control, I find that the loss of that income does not constitute extenuating circumstances that prevented the Landlord from moving into the rental unit, as the Co-owner could have sought alternate employment.

I have considered the evidence that shows the Landlord was laid off on May 18, 2021. While I accept that this may have exacerbated the impact the loss of the Co-owner's job would have had on the family's income, it does not negate the findings that the Co-owner quit his job and/or that he should have been able to find alternate employment.

I have considered the evidence that shows the Landlord gave birth in December of 2021. Although her pregnancy may explain why she was unable to seek alternate employment and is currently not working, it does not negate the findings that the Co-owner quit his job and/or that he should have been able to find alternate employment.

I have considered the evidence of the Landlord's mental health diagnosis. Although her mental health may have been exacerbated by the family's financial circumstances, it does not negate the findings that the Co-owner quit his job and/or that he should have been able to find alternate employment.

On the basis of the undisputed evidence, I find that the Co-owner told the Tenants that they could remain in the rental unit if they agreed to pay increased rent of \$150.00 per month. On the basis of the testimony of the Tenant and in the absence of evidence to

the contrary, I find that the offer to allow the Tenants to remain in the rental unit was made prior to service of the Two Month Notice to End Tenancy for Landlord's Use on May 25, 2021.

As the offer to remain in the rental unit for additional rent was made prior to service of the Two Month Notice to End Tenancy for Landlord's Use, I find it reasonable to conclude that the Landlord intended to continue renting the unit if she could increase the rent. As the offer was made prior to end of the Co-owner's employment ending in July of 2021, I find the offer refutes the Landlord's submission that they re-rented the unit because they were unable to afford to live in the unit after the Co-owner's employment ended.

As I am not satisfied there were extenuating circumstances that prevented the Landlord from moving into the rental unit, I find that the Landlord must pay the Tenants \$18,000.00, pursuant to section 51(2)(a) of the *Act*. \$18,000.00 is the equivalent of 12 times the monthly rent of \$1,500.00.

In adjudicating this matter, I have placed no weight on the Landlord's submission that an Order requiring the Landlord to pay compensation to the Tenants will be very difficult for the Landlord due to their employment status and the added expense of a newborn child. While I am sympathetic to their circumstances, the *Act* does not permit me to exempt a landlord from paying the penalty imposed by section 51(2)(a) of the *Act* on the basis financial hardship.

Section 51(1) of the *Act* requires a landlord to pay a tenant the equivalent of one month's rent if they are served with a Two Month Notice to End Tenancy for Landlord's Use. The payment is intended to compensate a tenant for the cost and inconvenience of moving.

On the basis of the undisputed evidence, the Tenants received compensation of \$1,500.00 in accordance with section 51(1) of the *Act*. I therefore find that the Tenants have been reasonably compensated for costs associated to moving from the rental unit and that no further compensation is warranted. I therefore dismiss the Tenants' claim of \$2,154.37.

I note that the Tenants are claiming compensation of \$850.65 because they were unable to move into their new rental unit until August 07, 2021 and had to find temporary accommodation. I do not find this to be a reasonable moving expense, as

the Tenants had two months to find accommodation that was available for August 01, 2021.

I also note that the Tenants are claiming compensation of \$245.20 for ferry costs. I do not find this to be a reasonable moving expense, as the Tenants could have opted to move to a location which did not include ferry costs.`

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to recover the cost of filing this Application for Dispute Resolution from the Landlord.

Conclusion

The Tenants have established a monetary claim of \$18,100.00, which is comprised of \$18,000.00 pursuant to section 51(2)(a) of the *Act* and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenants a monetary Order in the amount of \$18,100.00. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of the 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 *Act*.

Dated: March 09, 2022

Residential Tenancy Branch