Dispute Resolution Services

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 damage or compensation under the *Act*, pursuant to section 67;
- a Monetary Order for compensation from the landlords related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The tenant, the landlords and counsel for the landlords attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this Decision.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

2. Is the tenant entitled to a Monetary Order for compensation from the landlords related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. The tenant moved in, in May of 2017 and moved out on October 27, 2019. At the start of the tenancy, the subject rental property was owned by different landlords. The landlords in this application for dispute resolution purchased the subject rental property from the original landlords and asked the original landlords to serve the tenant with a Two Month Notice to End Tenancy, for Landlord's Use of Property (the "Two Month Notice"), as a condition of sale. The Contract of Purchase of Sale was entered into evidence, and states at paragraph 5:

> 5. **POSSESSION:** The Buyer will have vacant possession of the Property at 8 a.m. on September 18, yr. 2019 (Possession Date) OR, subject to the following existing tenancies, if any: Current owner will give 2 months notice to tenant to move upon subject removal. Home will not be vacant and new owners will assume tenant until the end of the 2 months notice.

The tenant testified that the previous landlords (the sellers) served her with a Two Month Notice on August 18, 2019. The Two Month Notices was entered into evidence and states:

> 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 Two Month Notice states that the tenant must vacate the subject rental property by October 31, 2019.

Both parties agree that they met for the first time on September 18, 2019. The tenant testified that landlord C.I. told her at that time that he planned on "starting fresh" with a new tenant at market rent. The tenant testified that while she was looking for a new place to live, she came across an advertisement for the subject rental property at a rental rate of $1,500.00 per month available November 1, 2019. Landlord C.I. denied telling the tenant that he was planning on re-renting the unit after she moved out.

Both parties agree that while the tenant still resided at the subject rental property, on October 3, 2019, the tenant filed an application for dispute resolution with the Residential Tenancy Branch, in which she intended to claim 12 months' rent pursuant to section 51. Both parties agree that this application was dismissed because the tenant's claim, as stated on the Notice of Dispute Resolution, was actually for an Order for the landlord to comply with the *Act,* and at the time of the hearing the tenant did not have standing to make such a claim because the tenancy had already ended. In addition, the arbitrator found that the tenant's monetary claim was vague and did not state in writing the claim for 12 months' rent. The file number for the previous decision is located on the cover page of this decision. The tenant was granted liberty to apply for 12 months' compensation under section 51 of the *Act.*

The tenant testified that it was only after she filed the previous application that the landlords asked her to stay at the subject rental property but that given the conflict, she was not comfortable with the tenancy continuing

The tenant entered into evidence a letter from landlord C.I. dated October 9, 2019 which states in part:

> ….At the time of purchase it was requested the home to be vacant, we were unaware of the new BC Tenancy rules and were informed the house after purchase is to be used by us as owners as deemed appropriate hence the posting you saw.
>
> ….
>
> Our intent at purchase was not to make anyone homeless as we were just tenants recently, nor do we want to go down the route of hearing in November.

> Because he never intended to evict a tenant in the first place we would prefer you to stay as a tenant.…

The tenant testified that the above letter proves that the tenants intended on renting the subject rental property at market rent and only asked her to stay when they found out that they were not permitted to re-rent the subject rental property at a higher rental rate after evicting her for landlord's use.

The landlords testified that they listed the subject rental property for rent because they wanted to know what the market rent was, but that they never intended to actually rent it out. The landlords testified that they wanted vacant possession of the main portion of the house for themselves to live in and they wanted vacant possession of the subject rental property, the basement of said home, for landlord C.I.'s mother to live in.

The landlords testified that the plan was for landlord C.I.'s mother to move into the subject rental property and that she would help take care of the landlords' infant daughter. The landlords testified that at the time of purchase of the subject rental property, landlord C.I.'s mother resided in another country. The landlords testified that it was originally planned for landlord C.I.'s mother to move to Canada in September of 2019 but that due to a dental medical emergency, landlord C.I.'s mother was not able to come until October 25, 2019. The landlords entered into evidence a medical note dated October 22, 2019 which details an invasive oral infection for which landlord C.I.'s mother was seen starting on September 21, 2019. The landlords entered into evidence a boarding pass for C.I.'s mother dated October 25, 2019.

Both parties agree that the landlord wrote a letter to the tenant dated October 26, 2019, which states in part:

> …When we met the tenant on possession day, we found out from the tenant about eviction…Our intention is to occupy the entire property because my mother-in-law, [landlord C.I.'s] mom, is coming from [another country] to stay with us and take care of your 1.5 year old daughter. She was programmed to arrive on Sept 25th but due to health concerns had to postpone her arrival and it was unsure when she will be able to arrive. Please refer to Appendix 1- Witness statement, medical documentation and flight details…When we purchased the property our intent was full occupancy of the house because my mother-in-law will be staying with us to take care full time of our 1.5 year old daughter who currently goes to daycare full time to help us financially that way. Because the

> tenant did not want to renew the lease and my mother in-law could not be here at thought time due to a sudden health complication we made the decision to list the unit for rent in order to make up for lost income since we are paying for daycare. We cannot afford to pay daycare and have no rental income with our new mortgage….

The tenant testified that the above letter clearly states that landlords posted the October 1, 2019 advertisement because they wanted to rent the unit, not because they wanted to test the market value of the suite for rent. The tenant testified that she only learned about the landlords' mother moving in after she filed for dispute in October of 2019. The tenant testified that the landlords' story as to their original intention changed between the story presented in this hearing, that they never intended on renting it out, and the October 26, 2019 letter in which they state that after their mother's arrival date was delayed they posted the advertisement for rent.

The tenant testified that in the October 26, 2019 letter the landlords stated that they did not know about the eviction; however, since they asked the previous landlords to serve the Two Month Notice in the contract of purchase and sale, they were clearly aware of the eviction.

Counsel for the landlords submitted that while it may seem that the landlord's story has changed, in actuality, the story has remained the same, but the tenant did not have all of the information at one time. Counsel submitted that the landlords' intention was always to have vacant possession of the entire house because landlord C.I.'s mother was coming to take care of the landlords' daughter. The landlords testified that landlord C.I.'s mother moved into the subject rental property after the tenant moved out and that she lived there until mid April 2020 when she had to move back to her home country for medical care. The landlords testified that when landlord C.I.'s mother moved out, they had to put their daughter into full time daycare and so they decided to rent out the basement suite to defray the cost of daycare.

The landlords testified that they rented out the subject rental property for the first time starting August 1, 2020. The landlords entered into evidence a signed witness statement, dated January 2, 2022 from their current tenant which states:

> My name is [redacted for privacy]. I have resided at the basement suite of [the subject rental property] since August 1, 2020. I have been residing in the suite with my spouse since my move in date. When I moved in the suite was occupied

> by the owners. The owners of the house, [the landlords] live upstairs with their daughter.

The landlords entered into evidence two signed witness statements. The witness statement signed by L.L. states in part:

…I am the next door neighbour of [the landlords]….

- After [the tenant] left the suite, [the landlords] occupied the entire house because [landlord C.I.'s] mom came from [another country] to stay with them for long period of time. I believe [landlord C.I.'s] mom came to live when them to help them to take care of their daughter [name redacted for privacy]. I remember seeing her around the property with them and [the landlords' daughter] continuously.
- I can confirme that I have not seen any tenant occupy the basement suite during all this time.
- I can confirm that the basement suite was used by the [landlords' family] and did not have any tenant.
- To my knowledge they rented the basement suite in August – September of 2020.

The witness statement signed by K.L. states in part:

> …I am the next door neighbour of [the landlords]….To my knowledge this house was occupied by [the landlords] and their daughter [name redacted for privacy]. I know that their house has a basement suite and that when they moved in, the suite was rented out by the previous owner. Shortly after [the landlords] moved in the tenant left the suit. After the tenant moved out, [the landlords] occupied the whole house. I remember [landlord C.I.'s] mother came to live with them and I saw her stay in the basement suite for a long period of time.
>
> I can attest that the basement suite was used by the [landlords'] family and did not have any tenants for a while at least nine months if not more.
>
> I also remember a tenant moving in around August or September 2020…

The tenant testified that maybe the landlords' mother did move into the subject rental property but that at the time of the eviction, the landlords intended to evict her and re-rent the property at a higher rate. The tenant testified that the October 9, 2019 letter

shows that the landlords did not know the tenancy laws when they purchased the subject rental property and that they only tried to comply with them after she was served with the Two Month Notice. The tenant testified that she is seeking 12 months' compensation for being evicted in bad faith.

The tenant testified that she was forced to move two cities away from her son's school and her work due to issues of affordability. The tenant testified that in addition to the 12 months' compensation, she is seeking $886.00 for the cost of additional mileage to and from her new home to her daycare and work, for two months.

Analysis

Based on the testimony of both parties I find that the tenant served with the Two Month Notice on August 19, 2019 at the request of the landlords, in accordance with section 88 of the *Act.*

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under section 67 of the *Act,* there is a requirement that the party claiming compensation must do whatever is reasonable to minimize their loss. One way to minimize their loss is by applying for compensation pursuant to s. 51(2) of the *Act*, not pursuant to both

section 51 and section 67 of the *Act.* I find that the above failure to mitigate is fatal to the section 67 claim.

I also note that the 12 months rent payable under section 51 of the *Act* is meant to compensate the tenant for damages arising out of the failure of the landlords to comply with the Notice. I find that to award the tenant the statutory claim in section 51 of the *Act* and damages stemming from the tenant's move, pursuant to section 67 of the *Act*, would amount to double compensation, which is not intended by the *Act.*

Pursuant to my above findings, the tenant's section 67 claim for damages for increased mileage stemming from the tenant's move, are dismissed without leave to reapply.

Section 49(5) of the *Act* states:

> (5)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;
>
> (ii)the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The tenant made submissions regarding the good faith intention of the landlords when the Two Month Notice was served. I find that good faith as outlined in Residential Tenancy Policy Guideline 2A is not determinative on a section 51 claim.

Residential Tenancy Policy Guideline 2A states in part:

> In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is

> on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.
>
> Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).
>
> If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.
>
> If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.
>
> If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.
>
> The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.

I find that good faith usually comes into play if a tenant is seeking to cancel a Two Month Notice, which is not the case in this dispute. This dispute is centered around section 51 of the *Act* which does not contain a “good faith requirement”. Section 51 of the *Act* states:

> **51** (1)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.
> (1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2)If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.
(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 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.

(3)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.

Based on the testimony of the landlords, the witness statements of the landlords' neighbours, the witness statement of the landlords' current tenant, and the boarding pass entered into evidence, I find, on a balance of probabilities, that landlord C.I.'s mother moved into the subject rental property immediately after the tenant moved out. I accept the landlords' undisputed testimony that landlord C.I.'s mother moved out in mid-April of 2020 which is supported by the witness statements. I accept the landlord's testimony that they used the subject rental property for family use until it was rented out

in August of 2021. I find that the landlords accomplished the stated purpose for ending the tenancy as soon as the tenant moved out, which is a reasonable period of time, in accordance with section 51(2)(a) of the *Act.*

I find that the basement suite was used for landlord C.I.'s mother's habitation for approximately 6 months and was used by the landlords for the following three months after landlord C.I.'s mother moved out, until it was rented out in August of 2020. I find that the subject rental property was used by the landlords and their close family member for approximately nine months after the tenant moved out, in accordance with section 51(2)(b) of the *Act.*

The tenant is therefore not entitled to section 51 compensation because the stated reason for ending the tenancy on the Two Month Notice was complied with. While the landlords may have originally intended to rent the subject rental property for a higher rent after the tenant moved out, it is not what happened. Under section 51 of the *Act,* the original intention in serving the Two Month Notice is not important, what is important is if the landlords did what they said they were going to do on the Two Month Notice. In this case, the landlords complied with their reasons to end tenancy and so are not required to pay the tenant compensation undersection 51 of the *Act.*

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the $100.00 filing fee from the landlords, pursuant to section 72 of the *Act.*

Conclusion

The tenant's application for dispute resolution is dismissed 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: March 09, 2022

Residential Tenancy Branch