



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Logue's Lodge Rentals Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two of the tenants and an agent for the landlord.

Neither party raised any issues related to the service of the Application for Dispute Resolution, the hearing package or evidence. Both parties were prepared to proceed with the hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for the landlord failing to use the rental unit for the stated purpose on a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the tenants and the original landlord of the rental unit for a 5 ½ month fixed term tenancy beginning on October 15, 2020 that converted to a month to month tenancy on April 1, 2021 for a monthly rent of \$1,450.00 due on the first of each month with a security deposit of \$725.00 paid; and
- A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property issued by the selling landlord on May 27, 2021 with an effective vacancy date of July 31, 2021 citing that 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 the

notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenant submits that after receiving the Notice to End Tenancy from the landlord they moved out of the rental unit by July 13, 2021. The tenant also submits that in less than a month after they vacated the rental unit, they saw it posted on Airbnb for short- and long-term stays.

The landlord submitted that rental unit was purchased in partnership with their parents to be used as a second home for their parents, so that they could use it when they visit from out of province so they can see their children and grand children. In addition, as the landlord is in the process of selling their current home and building a new one they intended to move into the unit after they sell their current home.

The also submitted that there was no intention to rent as an Airbnb but that they had purchased the property without any viewing and that when they had actually seen the property, they determined that it required substantial renovation. Once they determined the extent of the renovations required, they decided to try and get some funds through renting it out on Airbnb to help defer the costs.

The landlord submitted that the intention was to begin the renovations upon taking possession of the unit in July 2021 but the contractor was not available until October and was completed by December 20, 2021.

The landlord submitted that in addition to a few Airbnb rentals that their parents had used the rental unit to stay in for a few days in each of the months of July, August and August 2021.

Analysis

Section 51 states a tenant who receives a notice to end a tenancy under section 49 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. A tenant may withhold the amount authorized from the last month's rent and that amount is deemed to have been paid to the landlord.

In addition, the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant 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.

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 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.

Residential Tenancy Policy Guideline 2A stipulates:

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v. Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy under sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

Vacant possession

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

Section E of the same Policy Guideline states:

A tenant may apply for an order for compensation under section 51 of the RTA if a landlord (or purchaser) who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy,
- or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

Under section 51(3) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above the Two Month Notice to End Tenancy was issued by the selling landlord at the request of the purchasing landlord to allow for the purchaser or a close family member to occupy the rental unit.

From the submissions provided by the landlord, the intention was for their parents to be able to use the property as a place to stay when they were visiting their family locally. In addition, the landlord's documentary submission stated that they plan to move into the property when their current house sells.

If I consider that the purpose for the purchase was to hold as a place for the landlord's parents to stay from time to time when they come to visit, I find that this purpose is not consistent with the requirements set forth in Policy Guideline 2A. As noted above, the landlord or their close family member must occupy the rental unit it cannot be held vacant and unused. Likewise, it cannot be used periodically by the parents and then rented out when the parents are not occupying it.

As such, I find that ending this tenancy so that the rental unit can be used as a vacation or 2nd home for the landlord and/or their parents with it vacant or rented out as vacation rental at various times does not constitute the unit being occupied by the landlord or a close family member.

Policy Guideline 50 states that states, in part:

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

If I were to consider the purpose for the purchase was for the landlord to move into the rental unit after they sold their current house and while waiting for their new home to be built, I find that the landlord should have moved into the rental unit within a reasonable time. If I follow the policy guideline, the landlord could have made some minor renovations to the unit and still, within a reasonable time, move into the unit.

However, the landlord had not, by the time of this hearing, moved into the rental unit (8 months after the effective date of the Notice). Even if I were to allow for the renovations that were completed in December 2021, I find to occupy the unit within a reasonable time the renovations would have had to have been completed in August or at the very latest September.

Based on the above, I find the landlords have not occupied the rental unit within a reasonable.

Policy Guideline also points out:

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.

As such, the landlord was required to use the property for the stated purpose and despite their submissions that they were not aware of the extent of the renovations that would be required, they were not allowed to use the property for any other purpose, including renovations and renting it out as vacation rentals.

For these reasons, I find the landlord has failed to use the rental unit for the stated purpose and the tenants are entitled to compensation in the amount of 12 times the monthly rent of \$1,450.00 or \$17,400.00, pursuant to Section 51(2) of the Act.

While the landlords have not specifically argued that there were extenuating circumstances that prevented them from accomplishing the stated purpose within a reasonable time, I have considered their submissions in relation to the reasons they changed their mind regarding the use as Airbnb accommodation.

Policy Guideline 50 states that extenuating circumstances are those where it would be unreasonable or unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control.

As such, if the reasons for the landlord to change their mind were that the unit required renovations and that they needed to rent out the unit to help fund the renovations, I find the landlord could have made these determinations prior to the purchase of the property and prior to asking the selling landlord to issue the Notice to End Tenancy, both of which were within the landlord's control.

As such, I find there are no exceptional circumstances that would allow me to excuse the landlord.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 51 and 67 and grant a monetary order in the amount of **\$17,500.00** comprised of \$17,400.00 compensation owed for failing to use the property for the stated purpose and the \$100.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: April 14, 2022

Residential Tenancy Branch