



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNETC, FFT

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution in which the Tenants applied for 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 October 08, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in October of 2021 were personally delivered to the business office of an agent for the Landlord. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

In December of 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that she thinks this evidence was served to the Tenant, via email, by another agent for the Landlord, although she does not know the date of service. The Tenant stated that this evidence was not received.

I find that the Landlord has failed to meet the burden of proving that his evidence was served to the Tenant. In reaching this conclusion I was heavily influenced by the absence of documentary evidence that shows evidence was served to the Tenant by email, by the Agent for the Landlord's testimony that she was not certain that the evidence was served to the Tenant, and by the Tenant's testimony that the evidence was not received. As the Landlord has failed to establish that his evidence was served, the Landlord's evidence was not 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. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the Landlord's correct name, as that name was provided by the Landlord at the hearing.

Preliminary Matter #2

The Landlord and the Tenant agree that the Landlord entered into a written tenancy agreement with the Tenant with the initials "RP" and that the business entity named as a Respondent on the Application for Dispute Resolution does not have a tenancy agreement with the Tenant.

As the business entity named as a Respondent on the Application for Dispute Resolution does not have a tenancy agreement with the Landlord, I find that they are not obligated to pay compensation to the Tenant. I therefore dismiss the application for a monetary Order naming the business entity.

The Landlord and the Tenant agree that the other Applicants named on the Application for Dispute Resolution do not have a tenancy agreement with the Landlord .

As the other Applicants named on the Application for Dispute Resolution do not have a tenancy agreement with the Landlord, I find that they are not entitled to compensation from the Landlord. I therefore dismiss the application for a monetary Order naming anyone other than the Tenant with the initials "RP".

Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *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?

Background and Evidence

The Landlord and the Tenant agree that:

- The tenancy began in 2020;
- The Tenant was required to pay rent of \$3,500.00 by the first day of each month;
- The Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use, which declared that the Tenant must vacate the unit by September 30, 2021;
- The Two Month Notice to End Tenancy for Landlord's Use declared that the tenancy is ending because the landlord or a close family member of the landlord intends in good faith to occupy the rental unit; and
- The rental unit was vacated on September 05, 2021.

The Agent for the Landlord stated the neither the Landlord nor a close family member of the Landlord moved into the rental unit. She stated that the rental unit was listed for sale sometime near the end of October of 2021 and that it was sold in November of 2021.

The Tenant stated that she took a photograph of a sale sign on the property in late September of 2021 and that the purchasers of the property introduced themselves to her parents, who live next door, in October of 2021.

The Agent for the Landlord stated that:

- when the Two Month Notice to End Tenancy for Landlord's Use was served the Landlord intended to move into the unit with his wife and children;
- when the Notice to End Tenancy was served, the Landlord was living in an apartment that was owned by the Landlord;
- the Landlord is still living in that apartment;
- the Landlord owns a food delivery company, which was impacted by the COVID-19 pandemic;

- in June of 2021 the Landlord's business was "doing okay";
- the Landlord's business faltered in July and August of 2021;
- when the Two Month Notice to End Tenancy for Landlord's Use was served on July 08, 2021, the Landlord knew his business was "in trouble" however he had loans from other sources that allowed the business to continue; and
- he subsequently determined that he needed to close his business and sell the unit because he did not have sufficient resources to pay his debts.

Analysis

On the basis of the undisputed evidence, I find that:

- the Landlord and the Tenant had a tenancy agreement;
- at the end of the tenancy the Tenant was paying monthly rent of \$3,500.00;
- the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use, in which the Landlord declared that the Landlord or a close family member of the Landlord intended to move into the rental unit;
- the Notice to End Tenancy declared that the rental unit must be vacated by September 30, 2021; and
- the rental unit was vacated on September 05, 2021.

Section 49(3) of the *Act* authorizes a landlord who is an individual to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. I find that the Two Month Notice to End Tenancy for Landlord's Use that was served to the Tenant was served pursuant to section 49(3) of the *Act*.

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 12 times the monthly rent payable under the tenancy agreement.

On the basis of the undisputed evidence, I find that the Landlord or a close family member did not move into the unit, which was the reason for ending the tenancy cited on the Two Month Notice to End Tenancy for Landlord's Use. Rather, the rental unit the rental unit was listed for sale and was sold sometime prior to the end of November of 2021. As the Landlord or a close family member did not move into the unit, I find that the Landlord must pay the Tenant the equivalent of 12 times the monthly rent,

which is \$42,000.00.

Section 51(3) of the *Act* authorizes me to excuse a landlord from paying the tenant the amount required under section 51(2) of the *Act* if, in my opinion, extenuating circumstances prevented the landlord 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 there is insufficient evidence to establish that there were extenuating circumstances that prevented the Landlord from moving into the rental unit. In reaching this conclusion I was influenced by the absence of documents that have been accepted as evidence that show the Landlord experienced a marked decrease in income between July 08, 2021, when the Notice to End Tenancy was served, and the time the rental unit was sold.

Even if I accepted that the Landlord closed his business sometime after the Notice to End Tenancy was served on July 08, 2021, I find that the Landlord submitted insufficient evidence to show that the closure and subsequent loss of income could not have been reasonably expected. In the absence of evidence to show that the Landlord did not reasonably expect that his business would close and his income would be

reduced, I find that he cannot rely on finances to excuse him from paying the penalty imposed by section 51(2) of the *Act*.

I find that the Tenant's application has merit and that the Tenant is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim of \$42,100.00, which is comprised of \$42,000.00 compensation 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 Tenant a monetary Order in the amount of \$42,100.00. 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: May 04, 2022

Residential Tenancy Branch