



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$22,800.00 for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51;
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

"Tenant LW" did not attend this hearing, which lasted approximately 66 minutes. The landlord, the landlord's lawyer, and tenant TW ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord and the landlord's lawyer confirmed their names and spelling. The landlord confirmed that she owns the rental unit and provided the rental unit address. She provided her email address for me to send a copy of this decision to her after the hearing and said she would provide a copy to her lawyer. She stated that she wanted her lawyer to be the primary speaker for the landlord at this hearing.

The tenant confirmed the names and spelling for her and tenant LW. She said that she had permission to represent tenant LW at this hearing (collectively "tenants"). The tenant provided her email address for me to send this decision to both tenants after the hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“*Rules*”) does not permit recording of this hearing by anyone. At the outset of this hearing, the landlord, the landlord’s lawyer, and the tenant all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make decision. Neither party made any adjournment or accommodation requests.

The landlord’s lawyer confirmed receipt of the tenants’ application for dispute resolution hearing package and the tenant confirmed receipt of the landlord’s evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants’ application and both tenants were duly served with the landlord’s evidence.

The tenant stated that she did not serve the landlord with a copy of her cellular phone screenshots of the rent she paid to the landlord during the tenancy. The landlord’s lawyer confirmed that the landlord did not receive the above evidence from the tenants. I informed the tenant that I could not consider the tenants’ above evidence at this hearing or in my decision because it was not served to the landlord, as required by Rule 3.1 of the RTB *Rules*. The tenant confirmed her understanding of same.

The landlord’s lawyer stated that he served a letter from a witness PD to the tenant on the date of this hearing, May 24, 2022, by way of email. The tenant said that she did not receive the above evidence from the landlord. I informed the landlord and her lawyer that I could not consider the landlord’s above evidence at this hearing or in my decision. The tenants did not receive the above evidence and did not have a chance to review it or respond to it. I informed the landlord and her lawyer that the evidence was late, since it would be deemed received less than 7 days prior to this hearing date, contrary to Rule 3.15 of the RTB *Rules*. The landlord’s lawyer confirmed his understanding of same.

The tenant confirmed receipt of the landlord’s Two Month Notice to End Tenancy for Landlord’s Use of Property, dated April 26, 2021 (“2 Month Notice”). In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord’s 2 Month Notice.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation under section 51(2) of the *Act*?

Are the tenants entitled to recover the filing fee paid for this application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began with the landlord and the tenant on November 1, 2020, pursuant to a handwritten tenancy agreement, signed by both the landlord and the tenant. Tenant LW moved into the rental unit in January 2021. This tenancy ended on June 30, 2021. Monthly rent of \$1,900.00 was payable each month, from January 2021 until the end of the tenancy. No security or pet damage deposits were paid by the tenants to the landlord. The rental unit is the basement suite of a house, where the landlord and her father were occupying the upper suite of the same house during this tenancy.

Both parties agreed to the following facts. The tenants vacated the rental unit, pursuant to the 2 Month Notice. A copy of the 2 Month Notice was provided for this hearing. The effective move-out date on the notice is June 30, 2021. The reason indicated on the 2 Month Notice was:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*
- *Please indicate which family member will occupy the unit.*
 - *The father or mother of the landlord or landlord's spouse.*

The tenant stated the following facts. The tenants seek compensation under section 51(2) of the *Act* for twelve months of rent compensation of \$1,900.00, totalling \$22,800.00, plus the \$100.00 application filing fee. The landlord did not use the rental unit for the purpose on the 2 Month Notice, so the tenants are entitled to compensation.

The tenant testified regarding the following facts. The landlord was not acting in good faith and her father did not move into the rental unit for six months after the tenants moved out. The landlord provided emails about selling the rental unit, but the realtor did not give proper information to the tenants to help them stay with the next person if they bought the rental unit. The landlord's 2 Month Notice says that the landlord's father will move into the rental unit, not the landlord. The tenant had a thesis for school and was trying to make arrangements to find a new rental unit. She found a new rental unit and still lives there now. The landlord has to prove that she did what she said she was going to do for six months. The tenant usually carries her phone and walks her dog. Her friends knocked on the door of the rental unit. Her partner wrote a letter for this hearing. Neither the tenant, nor her friends, saw the landlord's father or other people move into the rental unit. The tenant used to park her car on the street. There is no evidence that the landlord's father moved into the rental unit. She saw that the landlord cleaned the rental unit and she saw furniture coming in and out of the rental unit. The tenant took photos of the rental unit, while she was on walks with her dog, and they were provided as evidence for this hearing. Her friends sent photos to her of the rental unit. There was no one living at the rental unit, as per the tenant's witnesses and her own photographs.

The landlord's lawyer made the following submissions. On page three of the tenant's own written statement, submitted as evidence for this hearing, the tenant stated that the landlord's father cannot be left unattended, and the landlord was exhausted caring for her father. The landlord tried to care for her father and could not do anything further. The landlord served the 2 Month Notice to the tenants in good faith, in order for the landlord's father to move into the rental unit. The goal was to have "caregiver SF" care for the landlord's father but she was unvaccinated from covid-19, so the landlord did not hire her. The landlord chose not to hire a nurse to help her father at the rental unit. A registered "nurse HO" provided a written statement in the landlord's evidence submitted for this hearing, claiming that the landlord tried to care for her ailing parent, the landlord was burnt out, and the landlord would go to the car and let out her frustration and anger. The landlord had to put her father in a care home. The evidence from the tenant's friends shows clear evidence of trespass, as they were peering into the rental unit. The landlord intended for her father to live in the rental unit, the landlord's "friend PD" offered to provide assistance, and the tenant agreed that she saw a young lady and her daughter come in and out of the house. Just because the tenant and her friends knocked on the door during the day does not mean that no one was living in the house. For example, if the tenant is at school and someone knocks on her door during the day, she would not be home either. The tenant filed this application in October 2021, and her partner wrote a statement which appears to be "coached" in May 2022. The RTB

has no jurisdiction to refund the tenant's tuition, so the tenant is in the “wrong arena” for this claim. The landlord was unable to care for her father on her own and had to put him in a care home. The landlord had to gather her strength and it was extremely challenging for her. From July 2021 to May 2022, the landlord provided a statement that she did not receive any income from Airbnb for any rentals. The landlord also provided a care home agreement for her father, as evidence for this hearing.

The landlord testified regarding the following facts. Caretaker SF is not a nurse but a caregiver. Nurse HO is the only registered nurse. The landlord's father fell the day after he was admitted to his long-term care home. As per nurse HO's letter, the landlord used the rental unit for herself to get time away from her father's dementia and temper tantrums. The landlord would cry and scream during this time, and she had a baby camera for her father.

The tenant stated the following facts in response to the submissions of the landlord and the landlord's lawyer. She does not dispute that the landlord cares for her father. She had conversations with the landlord about the landlord's intent for her father to live in a care home. The email from nurse HO from September 2021, states that the intent was for the landlord's father to live in a care home and recommendations were made for his care. The fact is that the landlord's father did not move into the rental unit, so the tenants are entitled to compensation. The emails provided by the landlord do not include dates, places, or conversations regarding the landlord's father's intention and stay in the rental unit. The landlord did not provide any “strategy” for her “mental health time.” On May 11, 2022, nurse HO provided a letter in hindsight, which she did not provide in 2021. It was a “loose plan” for the landlord's father.

The landlord's lawyer made the following submissions in response to the tenant's response. There could be no “plan” from the landlord, when caregiver SF did not move into the rental unit. The landlord provided an email from May 13, 2021, saying that she needed someone for her father, not a roommate, to come in for three to four days per week. Nurse HO is a registered nurse at the hospital, and she has no reason to lie, since she is a medical professional, and she provided information regarding her emails and phone communications with the landlord from September 2021 to May 2022. Caretaker SF was not vaccinated, and the landlord tried to find someone else, including her friend PD, to help. There are extenuating circumstances in this case that the landlord's father could not move into the rental unit. The tenant has not provided any other evidence aside from photographs and a statement from her partner that it looks to be like an Airbnb because it is in a home. However, Airbnb's usually occur in homes.

The landlord stated the following in response to my questions. The plan was for her father to move into the rental unit in early July 2021, after the tenants moved out. Her father lived at the rental unit from mid-July to the end of July 2021, with friend PD, who was helping the landlord out. The landlord also used the rental unit for respite, while her father was living upstairs. She had to first clean and declutter the rental unit because it was left "filthy." She did not re-rent the rental unit to any new tenants or for Airbnb purposes. The rental unit is still empty as of the date of this hearing, as there are no people occupying it, but it is furnished. No one else occupied the rental unit, since the tenants moved out, aside from the landlord and her father.

Analysis

Tenants' Application and Rules

At the outset of this hearing, I informed the tenant that, as the applicants, the tenants are required to present their application and evidence, in order for me to make a decision regarding their application. The tenant affirmed her understanding of same.

During this hearing, the tenant repeatedly stated that the twelve-month rent compensation of \$22,800.00 was "excessive" and she did not want to pursue this claim against the landlord. She claimed that she thought it was too much, since it was twelve times the monthly rent. She said that she only wanted her school tuition back because her thesis was delayed in university and it took longer to finish her program in September, rather than springtime. When I repeatedly confirmed the above information with the tenant during this hearing, she repeatedly confirmed same. When I informed the tenant that the tenants' application for \$22,800.00 would be dismissed without leave to reapply, she then stated that she wanted to pursue this claim against the landlord.

The tenant repeatedly went back and forth, stating that she did, and did not, want to pursue her monetary claim for \$22,800.00 against the landlord. I informed the tenant that I was confused by her frequently changing submissions, and I required a definitive answer, in order to proceed with this hearing and make a decision about the tenants' application. I notified the tenant that she was the applicant and she had to decide whether she wanted to pursue the tenants' application or not. I repeated my questions several times to the tenant. The tenant then confirmed that she wanted to pursue the tenants' application for \$22,800.00 against the landlord and proceed with this hearing. I proceeded with the hearing and made a decision regarding the tenants' application, based on the tenant's above submissions at this hearing.

The tenants were provided with an application package from the RTB, including a four-page document entitled “Notice of Dispute Resolution Proceeding” (“NODRP”), which they were required to serve to the landlord. The NODRP, which contains the phone number and access code to call into this hearing, states the following at the top of page 2, in part (emphasis in original):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The following RTB *Rules of Procedure* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the tenant did not properly present the tenants’ application and evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple

opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the *RTB Rules of Procedure*.

During this hearing, the tenant failed to properly go through the claims and evidence submitted in support of the tenants' application. The tenant mentioned submitting documents, such as letters and photographs, but did not review them sufficiently in specific detail during this hearing. The tenant did not point me to specific page numbers, provisions, or details, during this hearing.

This hearing lasted 66 minutes, so the tenant had ample opportunity to present the tenants' application. During this hearing, I repeatedly asked the tenant if she had any other submissions or evidence to present, regarding the tenants' application and in response to the submissions of the landlord and the landlord's lawyer.

I provided the tenant with ample and additional time during this hearing, to privately log into her online banking account and look up information on her cellular phone, which she was also using to call into this hearing. The tenant requested additional time to complete the above tasks, during this hearing. I did not hear any evidence from the landlord or the landlord's lawyer, during the above time that I provided to the tenant.

Findings

Section 49(3) of the *Act* states the following:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51(2) of the *Act* establishes a provision whereby tenants are entitled to a monetary award equivalent to twelve times the monthly rent if the landlord does not use the premises for the purpose stated in the 2 Month Notice issued under section 49(3) of the *Act*. Section 51(2) states:

51 (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

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

It is undisputed that the tenants vacated the rental unit on June 30, 2021, pursuant to the 2 Month Notice. It is undisputed that the landlord issued the 2 Month Notice to the tenants for the landlord's father to occupy the rental unit after the tenants moved out. It is undisputed that the landlord's father qualifies as a close family member (parent), who is entitled to occupy the rental unit, pursuant to the 2 Month Notice.

Section 51(3) of the Act states the following:

- (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 the case may be, from*
 - (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*
 - (b) using the rental unit 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 50 states the following, in part, with respect to extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before 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 didn't notify the landlord of any further change of address or contact information after they moved out.*

The following are probably not extenuating circumstances:

- *A landlord ends a tenancy to occupy a rental unit and they change their mind.*
- *A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.*

Residential Tenancy Policy Guideline 2A states the following, in part:

E. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE

Residential Tenancy Act

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.

I am required to consider the above section 51(3) of the Act, regardless of whether it is raised by any party during this hearing. The landlord's lawyer raised the issue of extenuating circumstances in his submissions, during this hearing.

On a balance of probabilities and for the reasons stated below, I find that the landlord met her onus of proof and provided sufficient evidence that extenuating circumstances prevented her from accomplishing the stated purpose for ending the tenancy, as indicated on the 2 Month Notice. I find that the circumstances surrounding the

landlord's father's health and caregiving were unforeseen events that could not have been predicted or controlled by the landlord, during an ongoing worldwide covid-19 pandemic.

I accept the landlord's documentary and affirmed testimonial evidence that the landlord's father occupied the rental unit for a short period of time from mid-July to the end of July 2021, after the tenants moved out. I accept the landlord's documentary and affirmed testimonial evidence, that the landlord also occupied the rental unit because she needed a respite away from her father due to burnout and mental health issues. The tenant did not dispute the above testimony from the landlord, during this hearing.

I accept the landlord's documentary and affirmed testimonial evidence that the landlord's father required a health caregiver to assist with his medical issues because the landlord was unable to handle them alone, that the health caregiver SF was unvaccinated from covid-19, so the landlord chose not to hire her to assist, and that the landlord was required to put her father in a care home to meet his medical needs. The tenant did not dispute the above testimony from the landlord, during this hearing. I find that the landlord could not have known at the time that she issued the 2 Month Notice to the tenants, that she would not be able to find a suitable caregiver for her father or that her father would need to be moved into a home, rather than live at the rental unit with a caregiver. I find that the landlord could not control the personal choice of caregiver SF, who was unvaccinated. I find that it was within the landlord's legal right to choose, for her father's health and safety, to not expose him to an unvaccinated caregiver during an ongoing worldwide covid-19 pandemic. The tenant did not dispute the above testimony from the landlord, during this hearing.

I accept the landlord's witness statement from nurse HO, dated May 11, 2022, that was submitted for this hearing. I find that nurse HO is a qualified, registered nurse, who is an independent, third-party witness, who I find has no financial or personal interest in this proceeding. The tenant did not dispute the above information during this hearing. While nurse HO did not testify at this hearing regarding her email statement, the tenant did not dispute the contents of her statement during this hearing. I find that the above statement from nurse HO confirms her ongoing involvement with the landlord and the landlord's father from late 2020 to May 2022. I find that the statement from nurse HO confirms the landlord's intention to use the rental unit for her father to occupy with private home care, as per his wishes, and the landlord's inability to find suitable caregivers for valid reasons, as it is a common problem in the geographical area. I find that the statement from nurse HO also confirms the landlord's father's medical issues as per his doctor and his need for medical care, the landlord's inability to care for her father

alone, the landlord's burnout and mental health issues, the landlord living in the rental unit which allowed a later transition to a care home, and the landlord's father's move to a care home after two years on a wait list, at the age of 95 years old.

I accept the landlord's documentary evidence of emails ranging from May 2021 to February 2022, involving the landlord and nurse HO, and the landlord and caregiver SF. They discuss the landlord's attempts to hire a medical caregiver, not a roommate, to assist her father at the rental unit, and to ensure that any medical caregiver is vaccinated and safe to be around her father. The landlord also provided a residential care home agreement, which was effective on January 19, 2022, for her father to move into a care home.

While the landlord's witnesses, nurse HO and caregiver SF, did not testify at this hearing regarding their statements, the tenant did not dispute the contents of their statements during this hearing. I do not accept the tenant's assertion that there was no "plan" with "dates" in the above statements, for the landlord's father to move into the rental unit. As noted above, I find that the landlord's father's medical condition was unpredictable and uncontrollable, there was an ongoing worldwide covid-19 pandemic, and there were multiple valid reasons for the landlord not being able to hire proper medical caregivers in the area.

I accept the landlord's affirmed testimony that she did not re-rent the rental unit to new tenants or use it as an Airbnb. I accept the landlord's undisputed documentary evidence, which is an Airbnb transaction statement, and the landlord's lawyer's submissions that no payments were made to the landlord from July 2021 to May 2022 for Airbnb at the rental unit. The tenant did not dispute the landlord's documentary evidence of the Airbnb transaction statement, during this hearing.

I find that the tenants provided insufficient evidence that the landlord was using the rental unit as an Airbnb after the tenants moved out. I find that the tenants' documentary evidence, which the tenant mentioned were photographs from her and her friends, and a letter from her partner, do not prove that the rental unit was being used for Airbnb purposes. I find that the tenant's testimony that she and her friends rang the doorbell, looked into the rental unit windows, and took photographs from outside the rental unit, do not prove that the rental unit was being used for Airbnb purposes. I also find that the tenants' documentary evidence is not impartial because it is provided by the tenant's partner and friends, who are partial to the tenant, rather than independent, third-party witnesses who have no financial or personal interest in this proceeding. The landlord's lawyer raised the above issue during this hearing and the tenant did not

dispute same. None of the tenants' witnesses testified at this hearing, regarding the above documents.

I find that no one had control over the health of the landlord's father, including his own doctors, nurses, caregivers, and the landlord. I find that despite the fact that the landlord's father could not occupy the rental unit for six months with a suitable medical caregiver, the landlord did not re-rent the rental unit to new tenants or use it for Airbnb or for monetary gain. I find that this shows the intention of the landlord was to use the rental unit for her father to occupy as per his wishes, which he did for a short period of time, rather than placing him directly in a care home. I find that the landlord's actions were reasonable, given the extenuating circumstances.

On a balance of probabilities and for the reasons stated above, I find that the tenants are not entitled to twelve times the monthly rent of \$1,900.00, totalling \$22,800.00, from the landlord. This claim is dismissed without leave to reapply.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord. This claim is dismissed without leave to reapply.

Conclusion

The tenants' entire application 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: May 26, 2022

Residential Tenancy Branch