



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNETC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2) and 67;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Preliminary Issue – Named Landlord

CHC attended as agent for YHC, CHC's mother. CHC stated that the named landlord YHC was present at the hearing but did not speak English. YHC does not speak English and CHC appeared on her behalf. CHC stated that YHC had transferred the property in which the rental unit is located to CHC although no documentary supporting evidence was submitted in support.

The tenant testified she was unaware of any such transfer and believed YHC was their landlord.

After discussion, CHC and YHC agreed that the name of CHC be added as a landlord. Accordingly, I direct that the proceedings be amended throughout to reflect the names of CHC and YHC as landlords and co-respondents.

CHC attended with their spouse and agent CJL. Both CHC and CJL provided affirmed testimony. The named landlords and the agent CJL are referenced in my Decision as "the landlord".

The tenant BB attended. The unit was a basement suite where the tenant, a husband and wife, lived.

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Each party confirmed they were not recording the hearing.

Each party confirmed the email address to which the Decision shall be sent.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The tenant filed this application on November 10, 2021. They claimed they are entitled to compensation of 12 months rent in the amount of \$9,360.00. They claim the landlord provided a Two Month Notice stating the landlord (or the landlord's mother or father) were moving into the unit and did not move in as required. The landlord acknowledged they did not move in and claimed there were extenuating circumstances. The landlord requested the Application for Dispute Resolution be dismissed.

The parties submitted conflicting evidence in a lengthy hearing. Relevant evidence, complying with the Rules of Procedure, was carefully considered in reaching this decision. Only key relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the Decision, is reproduced below

The Tenancy Agreement

A copy of the tenancy agreement was submitted. The parties agreed the monthly tenancy began September 9, 2010, and monthly rent payable on the first was \$780.00. The 11-year tenancy ended when the tenant moved out at the end of March 2021. The security deposit was returned.

Two Month Notice

The parties agreed the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") which stated that the mother or father of the landlord intended to move into the unit. The landlord testified this was an error and the landlord themselves intended to move in. In any event, the landlord acknowledged that neither the landlord nor any member of their family moved into the unit.

The parties agreed on the following. The Two Month Notice was served upon the tenant on February 8, 2021, with an effective date of March 31, 2021. The landlord did not provide the required two months notice. Nevertheless, the tenant did not dispute the Notice and moved out on March 31, 2021. An occupant unrelated to the landlord starting renting the unit on November 1, 2021.

Landlord's Submissions

The landlord testified as follows. CHC and CJL are spouses. They lived in another municipality and intended to move into the unit when they gave the Notice. The female landlord was experiencing challenging medical issues and wanted to live in the

municipality in which the unit was located to be close to her parents. She required their care due to the debilitating nature of her medical condition.

Although they lived in another municipality, the landlord acknowledged they did not take any steps to rent or sell their home and did not hire movers. They did not testify to any steps they took to move into the unit.

They did not move in because of the female landlord's medical condition. The landlord testified that the medical considerations were eventually resolved over time.

Accordingly, the landlord decided there was no need to move in as the female landlord no longer required care. After 6 months, they decided to rent the unit to someone else. The landlord submitted medical reports confirming the existence of the medical condition. The medical reports did not address the issue of whether it was advisable or necessary to move.

The landlord acknowledged neither they nor anyone else in the family had moved into the unit. They stated the unit was vacant 7 months after the tenant moved out and was then rented to a person who was not a relative. Extenuating circumstances prevented them from occupying the unit.

Tenant's Submissions

The tenant testified as follows. They said they were very happy in the unit for 11 years and had good relations with the landlord.

They were surprised and upset when they received the Notice to move out. The tenant stated that her adult son had been living with them during a fatal illness and had passed away shortly before the Notice was received. Their personal grief coupled with the pandemic, were all they could manage. Accordingly, they did not object to moving out and followed the landlord's request although the Notice did not give the required two months notice.

The tenant said they rented another unit at increased rent.

The tenant provided a copy of the Two Month Notice which is in the standard RTB form and complied with section 52 as to form and content.

The tenant stated that in early November 2021, 7 months after moving out, the tenant went to the unit to see if they had any mail there. An unknown occupant answered the door of the unit and stated they were the current renters. They acknowledged recently moving in for rent of "\$2,000.00" a month, although the landlord later corrected this to \$1,950.00. The tenant was astonished as they had paid \$780.00 monthly.

The occupant allowed the tenant to look inside the unit. The tenant testified it looked mostly the same as when they had moved out except for new flooring and two replaced doors.

The tenant became emotional in describing the stress and difficulties of finding an affordable replacement apartment given the male tenant's fixed retirement income while dealing with the family's grief at the personal loss of their son.

Summary of Claims

The tenant requested 12 months rent as compensation and reimbursement of the filing fee.

The landlord claimed there were circumstances that justified their failure to move in. they requested the tenant's application be dismissed.

Analysis

The Act

The Notice was issued pursuant to section 49(3) of the Act which states:

(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 of the *Act* sets out compensation due to tenants served with a notice to end tenancy issued under section 49 of the *Act* and states:

- (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.

Burden of Proof

Pursuant to section 51(2) of the *Act*, the landlord has the onus to prove they followed through with the stated purpose of the Notice. The landlord also has the onus to prove extenuating circumstances. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus to prove their position. Based on all the above, the evidence and testimony from the landlord and tenant, and on a balance of probabilities, my findings are set out below.

Extenuating Circumstances

The effective date of the Notice was March 31, 2021. *RTB Policy Guideline 50 – Compensation for Ending a Tenancy* addresses what a reasonable period is. As acknowledged by the landlord, they landlord did not move into the rental unit “within a reasonable period after the effective date of the notice”.

It is open to the landlord to submit that extenuating circumstances prevented the landlord from moving into the rental unit within a reasonable period after the effective date of the Notice.

Policy Guideline 50 states as follows about extenuating circumstances:

E. EXTENUATING CIRCUMSTANCES

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 by 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.

Extenuating circumstances are meant to cover unanticipated issues or issues which were out of the Landlord's control.

While the medical evidence supports the landlord's claims that the female landlord had a serious medical condition, they acknowledged that she had this condition at the time the Notice was issued. They testified that the medical condition did not arise *after* the

Notice was issued but was the reason for issuing the Notice in the first place. As stated, the female landlord wanted to be close to her parents.

The landlord submitted no evidence of planning for the move into the unit such as arranging for movers.

The landlord's testimony about the reasons for not moving in were vague, unconvincing and unclear. I find they have not submitted sufficient evidence that the medical condition changed to the extent that they no longer had to, or were able to, move in.

I have carefully considered the Act and the Policy Guideline as well as the landlord's evidence. I find the landlord has not met the burden of proof that there were extenuating circumstances that prevented them from moving in.

The landlord also raised the issue of necessary repairs or renovations to the unit when the tenant moved out. They testified the work took longer than expected because of the pandemic. The landlord did not provide details about what repairs and renovations were completed in the rental unit and did not submit documentary evidence showing what repairs and renovations were planned or took place. No receipts or contracts for work were submitted.

The landlord referenced difficulties in the repairs and renovations caused by the pandemic. However, the landlord did not provide a compelling link between the pandemic or pandemic guidelines and the delay in the repairs and renovations being started or completed. It is unclear based on the evidence provided how the pandemic caused delay in the work or how this affected the moving in by the landlord and why the unit which was empty.

I accept the tenant's testimony as credible that when she viewed the unit 7 months after moving out, the condition of the apartment was to a significant extent unchanged. I conclude that any repairs or renovations mentioned by the landlord were minimal and did not take seven months to complete.

I find the landlord has not established that repairs or renovations were an extenuating circumstance.

Based on the testimony and evidence, I have reached the conclusion that it is unlikely the landlord ever intended to occupy the unit as testified. I find the landlord has not met the burden of proof that extenuating circumstances prevented them from moving into the rental unit within a reasonable period after the effective date of the Notice.

Compensation

Pursuant to section 51(2) of the Act, the landlord must pay the tenant the equivalent of 12 times the monthly rent payable under the tenancy agreement which I find is \$9,360.00. I grant an award to the tenant under this heading of \$9,360.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the tenant was successful with their application, I order the landlord to repay the \$100.00 fee that the tenant paid to make application for dispute resolution.

Award

In summary, I grant the tenant a Monetary Order in the amount of \$9,460.00 calculated as follows:

ITEM	AMOUNT
12 months' rent	\$9,360.00
Reimbursement of filing fee	\$100.00
TOTAL	\$9,460.00

Conclusion

The tenant is granted a Monetary Order in the amount of \$9,460.00.

This Monetary Order must be served on the landlord. The Monetary Order may be registered and enforced as an Order of the Courts of the Province of BC

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 16, 2022

Residential Tenancy Branch