



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 Tenant's Application for Dispute Resolution, in which the Tenant 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 in November of 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch by the Tenant was personally delivered to the female Landlord. The Landlords acknowledged receipt of these documents and they were 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.

Issue(s) to be Decided

Is the Tenant entitled to compensation, pursuant to section 51(2) of the *Residential Tenancy Act (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 Tenant and the Landlords agree that:

- the tenancy began prior to the Landlords purchasing the property;
- when the tenancy ended, the monthly rent was \$1,400.00;
- the Landlords purchased the property and took legal possession of it on June 25, 2021;
- on May 17, 2021 the Landlords provided the seller with written notice that they wanted the seller to provide notice to end the Tenant's tenancy because the Landlords or a close family member of the Landlords intended to occupy the rental unit;
- the seller served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use which declared that the rental unit must be vacated by July 31, 2021; and
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit has been sold and the new owner and or a close family member of the new owner intends in good faith to occupy the rental unit.

The Tenant stated that the rental unit was vacated on July 29, 2021. The female Landlord stated that she believed it was vacated on July 30, 2021, or July 31, 2021.

The female Landlord stated that:

- when the seller was asked to serve the Tenant with notice to end the tenancy, the Landlords planned to have her mother move into the rental unit for the purposes of providing childcare;
- in early July of 2021 she had an argument with her mother regarding how her mother treated her child;
- approximately one week after that argument her mother informed her that she would not be moving into the rental unit;
- she explained to her mother that her failure to move into the rental unit placed her in a difficult position in regard to childcare;
- she explained to her mother that her failure to move into the rental unit also placed her in a difficult financial position but by that time the situation was "too far gone";
- the rental unit remained vacant for a few months; and

- in early October a personal friend moved into the rental unit, on a part-time basis, for the purposes of paying childcare.

Analysis

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

- the monthly rent of \$1,400.00 at the end of this tenancy;
- the Landlords purchased the property and took legal possession of the rental unit on June 25, 2021;
- the Landlords provided the seller with written notice that they wanted the seller to provide notice to end the Tenant's tenancy because the Landlords or a close family member of the Landlords intended to occupy the rental unit;
- the seller served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use which declared that the rental unit must be vacated by July 31, 2021;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit has been sold and the new owner and or a close family member of the new owner intends in good faith to occupy the rental unit, which serves as notice to end the tenancy pursuant to section 49(5) of the *Act*;
- the Landlords asked that the Two Month Notice to End Tenancy for Landlord's Use be served because the female Landlord's mother was going to move into the rental unit, for the purpose of assisting with childcare;
- the tenancy ended near the end of July of 2021, the exact date of which is not relevant to my decision;
- in July of 2021 the female Landlord and her mother had a disagreement, which resulted in the mother not moving into the unit; and
- in October of 2021 the Landlords' friend moved into the rental unit on a part-time basis, for the purpose of providing childcare.

Section 51(2) 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 of 12 times the monthly rent payable under the tenancy agreement. As the evidence clearly shows that a close family member of the Landlords (new owners) did not move into the rental unit and did not occupy the rental unit for at least six months, I find that the Landlords must pay the Tenant \$16,800.00, which is the equivalent of 12 times the monthly rent.

Section 51(3) of the *Act* authorizes me to 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 my opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, 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.*

While I accept the Landlords' submission that the female Landlord and her mother had a disagreement which resulted in the mother deciding not to move into the rental unit, I cannot conclude that this constitutes extenuating circumstances for the purposes of section 51(3) of the *Act*. Ending a tenancy because a family member wishes to move into a unit has a serious impact on tenants. As such, when a landlord wishes to end a tenancy for the purposes of having a family member move into the unit, I find the landlord must have reasonable certainty that the relationship with that individual is such that the individual will move into the unit and will live in the unit for at least six months.

The examples of extenuating circumstances provided in the policy guideline, in my view, are for more serious than a family disagreement.

Exempting a landlord from the penalty imposed by section 51(2) of the *Act* because

there has been a disagreement between the family members would, in my view, provide landlords with a very simply method of avoiding the penalty imposed by this section. Without clear and compelling evidence that the disagreement was such that it was beyond the capability of the average person to resolve, I cannot conclude that the Landlords should be excused from paying the penalty imposed by section 51(2) of the *Act*. In these circumstances, for example, the Landlords did not convince me that it would not have been reasonable for the mother to move into the unit even if the mother did not provide childcare.

I find that the Tenant's application has merit and that she 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 \$16,900.00, which includes \$16,800.00 compensation pursuant to section 51(2) of the *Act* and \$100.00 in compensation for the cost of filing this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order in the amount of \$16,900.00. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords 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 *Residential Tenancy Act*.

Dated: May 28, 2022

Residential Tenancy Branch