



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 by way of conference call in response to the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenants seek:

- compensation from the Landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property dated May 31, 2021 (the "2 Month Notice") pursuant to sections 51.4 and 67; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

The two Tenants ("SH" and "MB"), the Landlord and the Landlord's legal counsel ("PO") attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. A witness ("KT") for the Landlord appeared at the hearing and gave testimony when required and a witness ("NG") for the Tenants appeared at the hearing and gave testimony when required.

SH stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence ("NDRP Package") on the Landlord by registered mail on October 8, 2021. SH submitted the Canada Post tracking number for service of the NDRP Package on the Landlord to corroborate his testimony. I find the Landlord was served with the NDRP Package in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Service of Landlord's Evidence on Tenants

PO stated the Landlord served her evidence on the Tenants by Express Post on April 13, 2022. PO submitted the Canada Post tracking number of the Express Post service of her evidence on the Tenants to corroborate her testimony. SH stated the Tenants did not receive the Landlord's evidence package. When I asked, PO stated the Landlord addressed her evidence package to the Tenants at the address provided for service on the Application. When I asked SH if this was the correct address, SH stated the Tenants moved after the date of the Application. SH stated the Tenants updated their service address at ServiceBC but admitted the Tenants did not serve the Landlord with an amendment to the Application to change the Tenants' address for service.

The failure of the Tenants to complete and serve the Landlord with an amendment to change their service address does not affect service of the Landlord's when she relied, in good, on the address stated for service by the Tenants in the Application. I find the Tenants were served with the Landlord's evidence package pursuant to section 88 of the Act. I find, pursuant to section 90, the Tenants were deemed to have received the Landlord's evidence package on April 18, 2022. As such, I admitted the Landlord's evidence for this hearing.

Issues to be Decided

Are the Tenants entitled to:

- compensation from the Landlord in relation to the 2 Month Notice?
- recover the filing fee of the Application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenants submitted a copy of the tenancy agreement between the parties dated June 19, 2020. The tenancy commenced on June 30, 2020 for a fixed term ending July 1, 2021 with rent of \$2,100.00 each month. Although the tenancy agreement was silent on the date payment of rent was required, the parties agreed the Tenants were to pay the rent on the 1st day of each month. The Tenants were to pay a security deposit of \$500.00. The parties agreed the were served with the 2 Month Notice and the Tenants

which had an effective date of August 31, 2021. It was agreed the Tenants vacated the rental unit on July 31, 2022.

It was agreed that 2 Month Notice stated the reason for the 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”. The box the Landlord checked off under the question “Please indicate which close family member will occupy the unit” was “The child of the landlord or landlord’s spouse”.

PO stated the Landlord’s son (“NR”) used the rental unit for the purpose stated on the 2 Month Notice commencing on August 1, 2022 until NV went for college in Vancouver. PO stated the program NR was enrolled for commenced in January 2022. PO stated that she believed NR left for Vancouver at the end of December 2021. When I asked, PO admitted that NR occupied the rental unit for a “bit less” than six months. PO stated that the decision for NR to leave and go to Vancouver to college was “impromptu” and not something planned. When I asked, PO admitted that NB had occupied the rental unit for a full six months but rather about five months.

The Landlord stated her “true intentions” were to turn the rental unit over to NR and his girlfriend for their use as a gift to NR. The Landlord stated NR and his girlfriend moved into the rental unit on August 1, 2021 and, unfortunately, NR’s girlfriend developed some mental health issues. The Landlord stated the girlfriend needed a bit of help as her boss committed suicide. The Landlord stated NR and his girlfriend broke up unfortunately. The Landlord stated the breakup occurred “Novemberish” maybe or slightly before that. The Landlord stated payment of rent for the rental unit was being divided between NR and his girlfriend. The Landlord stated the rental unit is a three-level duplex with yard. The Landlord stated NR is 20 years old and working part-time and, financially, it didn’t work for him at the time. The Landlord stated that she paid the share of expenses that NR’s girlfriend had previously paid in order to keep NR in the rental unit. The Landlord stated breakup was devastating on NR so the discussion for NR was what to do now that his girlfriend moved out. The Landlord stated NR decided to go back to school and he was accepted into Langara College in Vancouver. The Landlord submitted a copy of NR’s acceptance into Langara to corroborate her testimony.

The Landlord stated the rental unit sold on February 1, 2022, being six month after the Tenants vacated. The Landlord stated she did not want to take any money during that six months to ensure she adhered to the requirements of the Act. The Landlord stated NR “remained in the rental unit until December 17, 2021 and we loaded up his stuff from the duplex into a U-Haul, which I am sure all the neighbours seen, and we drove down

to take possession of his new condo on December 18 so that [NR] could start school". The Landlord stated NR left some of his belongings in the rental unit such clothing, a desk and some weights. The Landlord stated that, although she preferred that NR remain in the same city as her, going to college was where his life was taking him. The Landlord stated that NR returned to the rental unit once when he returned home from Vancouver for Christmas 2021. The Landlord stated the last time he went to the rental unit was January 2, 2021. The Landlord stated she removed the remaining items of NR from the rental unit on the last weekend of January 2022 because it had to be empty for the closing of the purchase and sale of the rental unit on February 1, 2022.

KT was called to provide testimony on service of the 2 Month Notice on the Tenants. As the parties agreed the Tenants were served with the 2 Month Notice, KT was excused from the hearing.

SH testified the Tenants received the 2 Month Notice stating a child of the Landlord would be occupying the rental unit. SH stated it was their belief that the Landlord was acting in bad faith. SH stated a friend ("NG") of the Tenants found the rental unit available for rent on Facebook Marketplace on or about September 29, 2021. MH stated that the rent sought in the advertisement was \$2,200.00 per month, being \$100.00 more than the Tenant were paying for rent prior to vacating the rental unit. SH submitted three screenshots of the advertisements into evidence.

PO stated the Landlord took the advertisement down after NR and his girlfriend broke up. The Landlord testified the rental unit was never rented out. The Landlord stated the pictures appearing on Facebook were taken on June 30, 2022 at 5:30 pm. When I asked, the Landlord was unable to provide the date the pictures for the rental unit were posted on Facebook.

SH stated that, although the Landlord testified that the breakup occurred NR and his girlfriend occurred in November 2021, the Facebook advertisement was posted at least one month earlier around late September 2021. MH testified BC Assessment indicated the rental unit was sold on November 11, 2021.

PO stated the additional \$100 rent sought in the Facebook advertisement was for the Landlord to recover the electric utility for the rental unit and it was not intended the Landlord make profit over the rent paid by the Tenants. PO stated the Landlord decided to purchase another property for NR to stay in while going to school in Vancouver. When I asked whether the Landlord responded to the advertisement, the Landlord stated she "did not recall that". In response to MH's testimony that BC Assessment

reported the sale of the rental unit to be on November 11, 2021, the Landlord stated the closing of the purchase and sale occurred on February 1, 2022. PO stated the date of the purchase and sale agreement for the sale of the rental unit was November 11, 2022 and, after subject removal, the closing and possession dates for the sale occurred on February 1, 2022.

NG was then called to testify. NG stated he saw an advertisement on Facebook Marketplace for the rental unit. NG stated he knew about the situation between the Landlord and Tenants. NG stated he sent an inquiry to the Landlord through Facebook Messenger on September 29, 2021 to see if and when the rental unit was available for rent. NG stated the Landlord replied to his Face Message and the Landlord stated the rental unit was available for rent on October 30, 2021. NG stated he sent another message but he is uncertain if the Landlord ever replied to it.

PO stated that, in response to the timing of the advertisement on Facebook, the Landlord did not know exactly when the breakup occurred between NR and his girlfriend, but the Landlord took the Facebook advertisement down after the breakup between NR and his girlfriend. PO submitted that, instead of the Landlord attempting to rent out the property and then renting another property in Vancouver, the Landlord decided to be economical by selling the rental unit and purchasing a condominium in Vancouver for NR to live in while attending college.

Analysis

Rule 6.6 of the *Residential Tenancy Brule of Procedure* states the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The Tenants seek \$25,200.00 in compensation pursuant to section 51(2) of the Act the basis the Landlord failed to use the rental unit for the stated purpose in the 2 Month Notice. The 2 Month 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.

Subsections 51(2) and 51(3) of the Act state:

- 51(2) Subject to subsection (3), the landlord...must pay the tenant...an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement *if the landlord...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...from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord...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.

[emphasis in italics added]

Pursuant to Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, 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 the standard of proof.

The 2 Month Notice stated the rental unit would be occupied by the Landlord's close family member and checked the box "The child of the landlord or landlord's spouse" was checked off. Accordingly, in these circumstances, subsection 51(2) of the Act requires the Landlord establish that a child of the Landlord has occupied the rental unit for at least 6 months' duration, beginning within a reasonable period after the effective date of the 2 Month Notice. The effective date of the 2 Month Notice was July 31, 2021. Section 51(2)(a) states the Landlord must pay the Tenants compensation that is equivalent to

12 months rent if the Landlord does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the 2 Month Notice.

Residential Tenancy Policy Guideline 50 ("PG 50") addresses the requirements for a landlord to pay compensation to a tenant under the Act when a landlord or purchaser, as applicable, has not accomplished the stated purpose for ending the tenancy within a reasonable period or fails to use the rental unit for the purpose for which the notice was given. Part E of PG 50 addresses when a landlord may be excused from paying compensation in extenuating circumstances and it states:

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 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.

[emphasis in italics added]

The Landlord submitted she accomplished the purpose stated in the 2 Month Notice and that she is not required to pay compensation pursuant to section 51(2)(b) of the Act.

The Landlord admitted that she advertised the rental unit for rent at the end of September 2021 but that she removed the posting and did not rent it out. SH stated NG sent a Facebook Message to the Landlord inquiring about the availability of the rental unit. When I ask, the Landlord stated she did not recall this. However, NG testified that he sent a Facebook message to the Landlord and she responded back advising the rental unit was available on October 30, 2021. The Landlord stated she entered into a purchase and sale agreement on November 1, 2021 which was sold on February 1, 2022. As such, the Landlord submitted she had accomplished the purposed stated in the 2 Month Notice by ensuring the closing and possession dates were on February 1, 2022, being six months after the effective date. However, I do not find the Landlord's testimony that the rental unit was sold on February 1, 2021 to be determinative of whether NR actually occupied the rental unit for the full six months after the effective date of the 2 Month Notice

The Landlord stated NR "remained in the rental unit until December 17, 2021 and we loaded up his stuff from the duplex into a U-Haul, which I am sure all the neighbours seen, and we drove down to take possession of his new condo on December 18 so that [NR] could start school". The Landlord stated NR left some of his belongings in the rental unit such clothing, a desk and some weights. I find that, when NR moved removed possessions out of his rental unit and moved them into a condominium in Vancouver to go to college, he evinced a clear intention that he would no longer be occupying the rental unit. I do not find the storage of some a desk and weights in the rental unit until they were removed later by the Landlord constitutes occupation of the rental unit by the Tenant in these circumstances. Although the Landlord stated NR returned to the rental unit at Christmas 2021, she did not provide any testimony, or call any witnesses, to confirm that NR actually occupied the rent unit at any time after December 17, 2021. As such, I find NR no longer occupied the rental unit after December 17, 2021 and, therefore, he did not occupy the rental unit for a minimum of six months, beginning within a reasonable period of time, after the effective date of the 2 Month Notice.

I will now consider whether the Landlord is executed from paying compensation to the Tenants pursuant to section 51(2) on the bass of extenuating circumstances. The Landlord stated that, after NR broke up with his fiancé, she provided financial assistance to him to make up the shortfall of rent that NR's girlfriend was contributing. The Landlord stated NR considered his options and then decided to go to Vancouver to attend college and that she wanted to support him. The Landlord stated NR left for Vancouver on December 17, 2012 for college. As such, it was within the control of the Landlord and NR to decide whether NR would (i) continue to use the rental unit until

January 31, 2022; or (ii) move into a condominium in Vancouver so that he could attend college. I find nothing prevented NR from using the rental unit for the purpose stated in the 2 Month Notice other than for his decision, which was supported by the Landlord, to move out of the rental unit and into a condominium in Vancouver while attending college. I find it was a personal choice of the Landlord and NR that NR discontinued occupying the rental unit on December 17, 2021 instead of NR continuing to use the rental unit until January 31, 2022.

Based on the above, I find the Landlord has proven, on a balance of probabilities, that there were extenuating circumstances under section 51(3)(a) that prevented her from accomplishing the purpose stated in the 2 Month Notice. As such, I Order the Landlord to pay the Tenants compensation equivalent to 12 times the monthly rent of \$2,100.00, being \$25,200.00.

As the Tenants have been successful in the Application, I order the Landlord to pay the Tenants \$100.00 for reimbursement of their filing fee for the Application pursuant to section 72 of the Act.

Conclusion

The Tenants are granted a Monetary Order for \$25,300.00 calculated as follows:

Item	Amount
Compensation equal to 12 Months' Rent at \$2,100.00 per month	\$25,200.00
Reimbursement of Filing Fee for Application	\$100.00
TOTAL	\$25, 300.00

The Tenants are provided with this Order on the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: May 9, 2022

Residential Tenancy Branch