



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FFT

Introduction

The Tenant applies for the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for compensation equivalent to 12-months rent pursuant to s. 51(2);
- An order for monetary compensation for damages pursuant to s. 67; and
- Return of to her filing fee pursuant to s. 72.

L.N-B. appeared as Tenant. The Landlords did not appear, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlords did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Tenant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Tenant confirmed that she was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that she served the Landlords with a copy of the Notice of Dispute Resolution and her evidence by way of registered mail sent in September 2021, though could not recall the specific date. The Tenant confirmed that her application materials were sent to the addresses for the Landlords provided to her as indicated on the documents in her materials. I find that the Tenant served the Landlords with her application materials in accordance with s. 89 of the *Act* by sending it via registered mail to the addresses provided to her. Though the Tenant could not recall the specific date it was sent, I deem pursuant to s. 90 of the *Act* that the materials were received by the Respondents. I note that service was made several months ago and would have provided ample time to respond.

I would add that this matter has been rescheduled by the Residential Tenancy Branch and that a notice for the rescheduled hearing date and time was provided to the parties by the Residential Tenancy Branch.

Issue(s) to be Decided

- 1) Is the Tenant entitled to compensation equivalent to 12-months rent?
- 2) Is the Tenant entitled to monetary compensation for damages?
- 3) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Tenant confirmed the following with respect to the tenancy:

- She took occupancy of the rental unit on June 1 of either 2013 or 2014.
- She vacated the in June 2021.
- Rent at the end of her tenancy was \$1,547.00.

A copy of the front page of the tenancy agreement was put into evidence by the Tenant. On it, it lists a G.H. as the landlord. The Tenant explained that G.H. had been the previous owner of the residential property when she entered into the tenancy agreement. The Tenant further explained that the respondent Landlords, as listed in her application, purchased the property in the fall of 2021.

The Tenant advised that she was served with a Two-Month Notice to End Tenancy signed on November 4, 2020 (the "Two-Month Notice"). The Two-Month Notice lists the respondent A.K. as the Landlord and further indicates that it was being issued because the landlord or the landlord's spouse would occupy the rental unit.

The Tenant indicates that there were discussions with respect to extending the period of time in which she could stay at the property. The Tenant also discussed that she became aware that the Landlords sought to demolish the property and build a new and larger house on the lot. The precise series of events is not particularly relevant except to the extent that it prompted the Tenant to file an application to cancel the Two-Month

Notice, which came on for hearing on April 12, 2021. A copy of the April 12, 2021 decision (the "April 2021 Decision") was put into evidence by the Tenant.

The parties reached a settlement at the hearing, which was outlined in the April 2021 Decision as follows:

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The landlord agrees that the notice to end tenancy issued on November 4, 2020 is amended to show an effective (move-out) date of April 30, 2021.
2. The tenant acknowledges the notice to end tenancy is valid and agrees to vacate the rental unit by 1 :00 p.m. on April 30, 2021.
3. The landlord will pay to the tenant the equivalent of one month's rent in the amount of \$1,547.00 in accordance with section 51(1) of the *Act*.
4. The tenant retains the right to seek compensation from the landlord, the purchaser, or both under section 51 (2) should she choose to do.

At the hearing, the Tenant indicates it was at the April 12, 2021 hearing that she learnt that the Landlords had sold the property. This point is also made within the April 2021 Decision, which states the following:

The parties agree that the named landlord no longer owns the rental unit. The landlord's agent confirmed that they were the tenant's landlord at the time the notice to end tenancy was served and that the tenant was not yet compensated with the equivalent of one month's rent. The new owner of the rental unit currently holds the tenant's security deposit.

The Tenant advised at the hearing that she investigated the sale of the property and discovered that it was sold in January 2021. The Tenant says she obtained this information from BC Assessment. I have reviewed the information on BC Assessment for the property, which indicates that it was last sold on March 25, 2021.

The Tenant explained that the named Landlords and/or their agent attended the property with the new owner to deliver the April 2021 Decision and order for possession. The Tenant indicates that she discussed the move-out date with the new owner, who had indicated to her that if she needed more time to find another place, he would not enforce the order for possession on April 30, 2021.

The Tenant further explained that on either May 5 or 6, 2021, bailiffs attended the property to enforce the order for possession after obtaining a writ of possession from the BC Supreme Court. A copy of the writ of possession, dated May 5, 2021, was put into evidence by the Tenant. It notes that the Landlord's agent, one A.S., obtained the writ on behalf of the respondent Landlords as named in the Tenant's application.

The Tenant explained that the bailiff's attendance at the property was unexpected given her understanding with the new owner. The bailiff got to work and began to assist movers in removing the Tenant's belongings. After some time, the Tenant says the bailiff was contacted by phone and stopped forcibly removing her belongings after the phone call. The items that were in the moving truck were removed, left at the property, and the bailiff left. The Tenant's written submission indicate that she had a conversation with the new owner when the bailiffs were at the property, in which the Tenant described him as being apologetic and unaware that the order for possession was being enforced.

The Tenant says that the bailiff had towed a vehicle off the property, a 1998 or 1999 GMC 1-Ton Truck. The Tenant advises that the GMC Truck was not returned to her nor was she informed on its whereabouts. The Tenant denied being provided the contact information for the bailiff to retrieve or locate the GMC Truck. The Tenant speculated that it has since been scrapped. She seeks compensation from the Landlords for the loss of the value of the truck, which the Tenant estimated to be \$8,000.00.

The Tenant further explained that a laptop was damaged by the movers when it had been packed into one of the boxes by the movers when the bailiff attended the property. The Tenant says the laptop had been functional prior to being put into the box, though it was no longer functional when she unpacked it. The Tenant says that the laptop had been purchased for \$1,200.00 approximately a year to a year-and-a-half before May 2021. The Tenant seeks compensation in the amount of \$1,200.00 for the loss of her laptop.

No receipts or value estimates for the GMC Truck or the laptop were put into evidence by the Tenant.

Analysis

The Tenant seeks compensation equivalent to 12-months rent and compensation for damages.

Pursuant to s. 51(2) of the *Act*, where a landlord has issued a notice to end tenancy pursuant to s. 49 a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement if the Landlord cannot establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

Policy Guideline #50 states that once a notice is issued under s. 49 the purpose stated in the notice must be accomplished and cannot be substituted for another purpose even if the separate purpose would have been valid grounds for ending a tenancy under s. 49.

Under the present circumstances, the Two-Month Notice clearly states that it was issued on the basis that the landlord or the landlord's spouse would occupy the rental unit. I have little reason to doubt the Tenant when she stated that she learnt at the hearing in April 2021 that the property had been sold and would not be occupied by the Landlords or their spouse. As made clear in the April 2021 Decision, the Landlords admitted that the property had been sold. On its face, the admission essentially confirms that the stated purpose for the Two-Month Notice was not fulfilled. The claim is properly set before the named respondents, who were the individuals that issued the Two-Month Notice when they took possession of the rental unit in November 2020. This point is reinforced by the April 2021 Decision.

I note that the April 2021 Decision is quite clear that the Tenant acknowledged the Two-Month Notice was valid and that the only amendment to the Two-Month Notice was with respect to a change in the effective date, which was extended to April 30, 2021. There is also specific mention within the settlement that the Tenant retained the right to seek compensation from the Landlords under s. 51(2) of the *Act*. There is nothing within the April 2021 Decision that would lead me to believe that the Tenant's right to claim compensation under s. 51(2) was affected by the settlement.

I further note that s. 51(2) of the *Act* places the evidentiary burden on the Landlords to prove that the stated purpose was fulfilled. The Landlords were not present and thus

failed to displace their evidentiary burden. However, in light of the clear admission by the Landlords that the property has been sold, as reflected in the April 2021 Decision, I find that the Landlords did not fulfill the stated purpose of the Two-Month Notice.

As made clear by Policy Guideline #50, a landlord may not elect to alter the purpose for ending the tenancy after issuing a two-month notice to end tenancy. In this case, the Landlords admitted in April 2021 that they sold the property, rather than occupy it as stated in the Two-Month Notice.

I find that the Tenant is entitled to compensation under s. 51(2) of the *Act* equivalent to 12 times the rent that was payable under the tenancy agreement. I accept the undisputed evidence of the Tenant, which was corroborated by the April 2021 Decision, that monthly rent was \$1,547.00. Accordingly, the Tenant is entitled to compensation under s. 51(2) of the *Act* in the amount of \$18,564.00 (\$1,547.00 x 12).

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

With respect to the Tenant's claim for monetary compensation under s. 67, I note that the Tenant provides no documentary evidence to support that the property was damaged or destroyed, nor was evidence provided with respect to the value of the property. The Tenant provided oral evidence with respect to these aspects of the claim, though one would expect photographs, estimated values for the property, or the receipt for the purchase of the laptop. Considering the lack of documentary evidence, I would not grant the Tenant's claim for compensation for damage to her property.

I further note that the circumstances of this dispute would lead me to believe that I do not have jurisdiction to determine the monetary claim in any event. The *Act* governs and regulates the contractual relationship between landlords and tenants. Landlord is a term defined under s. 1 of the *Act*, which states the following:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

The respondent Landlords ceased being landlords under the *Act* once they surrendered possession of the property to the new owner, which in this case appears to have occurred on March 25, 2021. I cannot explain why an order for possession was granted in favour of the named respondents in the April 2021 Decision as they were not entitled to possession of the rental unit when the hearing occurred. It may be that the information with respect to when possession of the property was transferred to the new owner was not before the arbitrator on April 12, 2021. In any event, the respondent Landlords were not entitled to the order for possession on April 12, 2021 and were most certainly not entitled to obtain a writ of possession with the BC Supreme Court on May 5, 2021. The fact that the bailiffs were called off and the new owner was not aware the writ had been obtained would confirm that they were not acting as agents for the new owner.

I provide this explanation because it would appear to me that the monetary claim cannot be advanced under the *Act* as the respondent Landlords were not acting as landlords but in a personal capacity when the events occurred. The Director does not have jurisdiction to determine disputes outside the context of a landlord-tenant relationship.

I find that I do not have jurisdiction to determine the monetary claim as the activities of the respondent Landlords were undertaken in their personal capacity after the landlord-tenant relationship between the parties had ended. If I did have jurisdiction, I would have found against the Tenant as she failed to provide sufficient evidence to prove and quantify her claim.

Conclusion

The Tenant is entitled to compensation under s. 51(2) of the *Act*, which is equivalent to 12 times monthly rent under the tenancy agreement. I order pursuant to s. 51 of the *Act* that the Landlords pay \$18,564.00 to the Tenant (12 x \$1,547.00).

I do not have jurisdiction to determine the Tenant's claim for damages under s. 67 of the *Act* as the actions of the respondent Landlords were undertaken after the landlord-tenant relationship had ended. Had I had jurisdiction, I would not have found in the Tenant's favour as there was insufficient evidence to prove or quantify her monetary claim.

As the Tenant was partially successful in her application, I find that she is entitled to the return of her filing fee. Pursuant to s. 72 of the *Act*, I order that the respondent Landlords pay the Tenant's \$100.00 filing fee.

It is the Tenant's obligation to serve the order on the Landlords. If the Landlords do not comply with the monetary order, it may be filed by the Tenant with the Small Claims Division of the Provincial Court and enforced 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 03, 2022

Residential Tenancy Branch