



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNETC AND FFT

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied for compensation relating to how the tenancy ended and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in September was sent to each Respondent, via registered mail, at the service address noted on the Application for that individual. The Tenant submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Respondent with the initials “JL”, hereinafter referred to as the Landlord, acknowledged receipt of these documents.

The Respondent with the initials “HY”, hereinafter referred to as the Purchaser, acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 03, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on April 14, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The Purchaser submitted no evidence to the Residential Tenancy Branch.

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 *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 Landlord and the Tenant stated that:

- The Landlord and the Tenant entered into a tenancy that began on April 01, 2009;
- On July 22, 2020 the Tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use;
- The Notice to End Tenancy declared that all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit;
- The Notice to End Tenancy declared that the rental unit must be vacated by September 30, 2020;
- The rental unit was vacated on October 01, 2020; and
- When the tenancy ended the monthly rent was \$1,496.50.

The Purchaser stated that he does not know any of the details of the tenancy but he understands that a Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant which declared that all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice

because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Landlord and the Purchaser agree that:

- The Purchaser purchased the rental unit;
- The Purchaser took possession of the rental unit on October 07, 2020;
- In an addendum to the contract of purchase and sale, dated July 15, 2020, the Purchaser asked the Landlord to serve the Tenant with notice to end the tenancy because all the conditions of the sale were complete and the Purchaser or a close family member intended to occupy the unit.

The Agent for the Landlord stated that the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant on the basis of the addendum to the contract of purchase and sale.

The Purchaser stated that:

- He did not view the rental unit prior to purchasing it;
- Nobody acting on his behalf viewed the rental unit prior to purchasing it;
- He lives the lower mainland;
- When he purchased the rental unit, he intended to move into the unit;
- Upon taking vacant possession of the rental unit he determined it was in very poor condition and that significant repairs were required;
- Upon taking vacant possession of the rental unit he decided not to move into the rental unit because he felt the neighbourhood was unsafe;
- Upon taking vacant possession of the rental unit he decided not to move into the rental unit because he was not satisfied with the parking;
- He began renovating the rental unit in the middle of October of 2020;
- The renovations were completed after approximately three months;
- A few days after the renovations were completed, he began advertising for potential renters;
- The rental unit was not re-rented;
- Neither he nor a close family member moved into the rental unit; and
- The rental unit was sold in January of 2021.

The Tenant stated that:

- She found an advertisement for the rental unit on a popular website;

- She submitted evidence of those advertisements, one of which declared the rental unit was available for rent for November 10, 2020;
- A friend met with the Purchaser on November 29, 2020 to discuss renting the unit, at which time the friend viewed the vacant rental unit; and
- She observed a “for sale” sign on the property on October 06, 2020 or October 07, 2020.

After the Tenant testified about the advertisement that shows the unit was available for rent on November 10, 2020, the Purchaser stated that he does not recall the specific dates of his advertisements.

After the Tenant testified about her friend viewing the unit on November 29, 2020, the Purchaser stated that he showed the rental unit on various occasions but he does not specifically recall showing it on November 29, 2020.

After the Tenant testified about observing a “for sale” sign on the property on October 06, 2020 or October 07, 2020, the Purchaser stated that he does not recall when the sign was posted.

Analysis

On the basis of the undisputed evidence, I find that on July 22, 2020 the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use, which declared that all the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

Section 49(5)(i) of the *Act* authorizes a landlord to end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that the Landlord served the Two Month Notice to End Tenancy for Landlord's Use because she was asked to do so by the Purchaser in an addendum to the contract of purchase and sale dated July 15, 2020. This addendum, which was submitted in evidence, declares that all conditions of the

sale have been completed and the buyer or a close family member intends to occupy the rental unit.

Section 51(2)(a) 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 12 times the monthly rent payable under the tenancy agreement.

On the basis of the undisputed evidence, I find that the rental unit was vacated on October 01, 2020, at which time the Tenant was paying monthly rent of \$1,496.50.

On the basis of the testimony of the Tenant and the documentary evidence that corroborates that testimony, I find that the Purchaser was actively attempting to rent the unit in November of 2020.

I find the Purchaser's initial testimony that he did not begin advertising the rental unit until he completed the renovations to the unit, which was approximately 3 months after the rental unit was vacated, is clearly refuted by the documentary evidence that shows the rental unit was advertised in the first half of November of 2020.

On the basis of the undisputed testimony of the Purchaser and a Title Search submitted in evidence by the Tenant, I find that the Purchaser sold the rental unit in January of 2022.

On the basis of the undisputed testimony of the Purchaser, I find that the Purchaser nor a close family member of the Purchaser moved into the rental unit.

I find that neither the Purchaser nor a close family member of the Purchaser took reasonable steps to move into the rental unit and they have not occupied the rental unit for a period of at least six months since the rental unit was vacated, which was the stated purpose for ending the tenancy on the Two Month Notice to End Tenancy for Landlord's Use. Pursuant to section 51(2)(a) of the *Act*, I therefore find that the Purchaser must pay the Tenant the equivalent of 12 times the monthly rent, which is \$17,958.00.

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 section 51(2) of the *Act* 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.

I find that the Purchaser has submitted insufficient evidence to establish that the rental unit needed extensive repairs. In reaching this conclusion I was influenced by the absence of any evidence from the Purchaser that establishes he could not move into the rental unit because the unit required repairs. Even if I accepted that the rental unit needed extensive repairs, it is clear that the Purchaser concluded that the unit was habitable within a few weeks, as he offered it for rent in November of 2020. I therefore find that the alleged need for repairs cannot be considered extenuating circumstances that should excuse the Purchaser from paying the penalty imposed by section 51(2) of the *Act*.

I find that the Purchaser's decision that he did not wish to move into the rental unit because he did not like the neighborhood or the parking is not an extenuating circumstances that should excuse the Purchaser from paying the penalty imposed by section 51(2) of the *Act*. These are issues that should have been carefully considered by the Purchaser before he ended the tenancy on the basis that he wished to move into the unit.

I find that the Landlord is not subject to the penalty imposed by section 51(2)(a) of the *Act*, as the Landlord did not have a legal right or a legal obligation to move into the unit after the tenancy ended. I therefore dismiss the application for a monetary Order naming the Landlord.

I find that the Tenant's application has merit and that the Tenant is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim of \$18,058.00, which includes \$17,958.00 in compensation pursuant to section 51(2)(a) of the *Act* and \$100.00 in compensation for the cost of filing this Application.

Based on these determinations I grant the Tenant a monetary Order in the amount of \$18,058.00. In the event the Purchaser does not voluntarily comply with this Order, it may be 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 *Act*.

Dated: May 03, 2022

Residential Tenancy Branch