



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Former Tenant on July 15, 2021, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation related to a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on January 31, 2022, and was attended by the Former Tenant L.S., the Purchaser A.S., and the Purchaser's parent/agent M.S. All testimony provided was affirmed. The parties and their agent(s) were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application, the Notice of Hearing, any amendments and the documentary evidence intended to be relied on by the applicant at the hearing. As the Purchaser acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, which includes the Application and the Notice of Hearing, as well as the documentary evidence before me from the Tenant, the amendment correcting the spelling of the M.S.'

surname and raised no concerns with regards to the date or method of service, I therefore find that they were sufficiently served for the purposes of the *Act* and the Rules of Procedure.

The Rules of Procedure also state that the applicant must be served with a copy of the documentary evidence intended to be relied on by the respondent at the hearing. As the Former Tenant acknowledged receipt of the documentary evidence before me from the Purchaser, and raised no concerns with regards to the date or method of service, I therefore find that the Former Tenant was sufficiently served for the purposes of the *Act* and the Rules of Procedure. Based on the above, the hearing proceeded as scheduled and I accepted all of the documentary evidence before me from the parties for consideration, as well as the amendment correcting a spelling error in the surname of M.S.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

Although the Purchaser's parent M.S. was named as the respondent by the Former Tenant in the Application, as M.S. had been acting on A.S.' behalf with regards to the tenancy after purchase of the property, the parties agreed that A.S. should be properly named as the respondent as they are the Purchaser. The Application was amended accordingly.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Former Tenant entitled to compensation from the Purchaser related to a Notice to End Tenancy for Landlord's Use of Property?

Is the Former Tenant entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the rental unit was sold by C.W., who is the landlord named in the tenancy agreement before me with the Former Tenant, and that a Two Month Notice was served on the Tenant by C.W., at the Purchaser's request. The parties agreed that the tenancy ended on April 30, 2021, as a result of the Two Month Notice, after the Former Tenant exercised their right to end the tenancy early, that the Former Tenant received compensation in accordance to section 51(1) of the *Act*, and that the Former Tenant's security deposit was returned to them in full. The Former Tenant stated that rent at the time the tenancy ended was \$1,070.00 per month, and although the Purchaser did not dispute this amount, they stated that the details of the tenancy agreement were not discussed as part of the sale of the property, as they had always intended to occupy the rental unit themselves, not continue the tenancy. The parties agreed that no rent was exchanged between them.

The Two Month Notice in the documentary evidence before me is signed and dated by the former landlord C.W. on March 5, 2021, has an effective date of June 1, 2021, and states that the reason the Notice has been served is because all of the conditions for the sale of the rental unit have been satisfied and the Purchaser, A.S., has asked the landlord, in writing, to give the Notice because the Purchaser intends in good faith to occupy the rental unit.

The Former Tenant stated that they are seeking 12 months compensation pursuant to section 51(2) of the *Act*, as instead of moving into the rental unit and occupying it only themselves, the Purchaser re-rented it numerous times on a short-term rental site. The Former Tenant stated that as they lived in the rental unit for 21 years, they have maintained relationships with the other tenants in the building, who state that they have not seen the Purchaser, do not think they live there, and see a constant stream of new people entering and leaving the Former Tenant's unit. The Former Tenant provided a copy of the Two Month Notice their previous landlord C.W. issued at the Purchaser's

request, numerous screen shots from a short-term rental website showing the rental unit listed for short-term rentals, numerous screen shots of reviews for the host listed on the short-term rental site (M.S.), photographs of an electric keypad on the door to their former rental unit, and a photograph allegedly showing short-term rental guest entering the unit.

Although the Purchaser acknowledged that they had their parent M.S. rent out the unit on a short-term rental site on several occasions, they stated that this was only done when they were out of town on vacation or business in an attempt to re-coup the cost of the renovations done to the unit after they purchased it. The Purchaser stated that they moved into the unit on June 15, 2021, after the renovations were complete, and that it is their only residence. The Purchaser stated that they work close by and provided their work address. They also stated that they are shocked by the Former Tenant's accusations, as they know the other tenants who have remained in the building and see them regularly. The Purchaser stated that only they have resided in the unit since the Former Tenant vacated, with the exception of 20 days where it was rented out on the short-term rental website as follows:

- July 1, 2021 – July 5, 2021;
- July 7, 2021 – July 8, 2021;
- July 8, 2021 – July 10, 2021;
- July 11, 2021 – July 13, 2021;
- July 16, 2021 – July 19, 2021;
- July 19, 2021 – July 21, 2021;
- July 25, 2021 – July 28, 2021; and
- September 10, 2021 – September 15, 2021.

The Purchaser provided a letter from their lawyer regarding the purchase of the building in which the rental unit is located, a property title certificate listing them as the only registered owner as of March 8, 2021, a copy of the Two Month Notice, emails regarding the Former Tenant's move-out date and a mice infestation, photographs of the rental unit before, during, and after renovations, utility bills for the property in their name (municipal utilities, electricity, and phone/internet), photocopies of their BCID and BC Driver's Licence listing the rental unit address as their place of residence, photographs of what the Purchaser states is a shared laundry and utility room, and a calendar they state shows their short-term rental bookings for the rental unit.

Analysis

Based on the documentary evidence and affirmed testimony before me, I am satisfied that a tenancy to which the *Act* applies existed between the parties. I am also satisfied that the Former Tenant was served with a Two Month Notice pursuant to section 49(3) of the *Act*, and that the tenancy ended as a result of the Two Month Notice on April 30, 2021, after the Former Tenant exercised their right to end the tenancy early, pursuant to section 50(1) of the *Act*. I am also satisfied that the Former Tenant received the required compensation set out under section 51(1) of the *Act*, and that the Former Tenant's security deposit has been returned, as the parties agreed at the hearing that this was the case.

Section 51(2) of the *Act* states that 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:

- the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- 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.

Section 51(3) of the *Act* states that 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:

- 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 do not find that use of the rental unit as a short-term rental for any duration during the six (6) month period either immediately following the effective date of the Two Month Notice, or following a reasonable period after the effective date of the Two Month Notice, meets the definition of occupancy by the Purchaser for residential purposes in accordance with section 49 and 51 of the *Act* or Policy Guideline #2A. I also do not find

that renting out the unit on a short-term rental site in order to recoup some or all of the costs incurred by the Purchaser for renovations to the rental unit constitutes extenuating circumstances under section 51(3) of the *Act*. As I do not find that A.S.'s own use of the rental unit after the tenancy ended, in conjunction with the previously mentioned short-term rentals, constitutes use of the rental unit for the stated purpose set out in the Two Month Notice, I therefore grant the Tenant \$12,840.00 in compensation, which represents 12 times the monthly rent of \$1,070.00, pursuant to section 51(1.2)(2) of the *Act*. As the Tenant was successful in their Application, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Pursuant to section 67 of the *Act*, I grant the Former Tenant a Monetary Order in the amount of **\$12,940.00**, and I order the Purchaser A.S. to pay this amount to the Former Tenant.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Former Tenant a Monetary Order in the amount of **\$12,940.00**. The Former Tenant is provided with this Order in the above terms and the Purchaser must be served with this Order as soon as possible. Should the Purchaser fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated orders, nor my authority to render this decision and order, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

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 13, 2022

Residential Tenancy Branch