



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

The Tenants seek an order pursuant to s. 51 of the *Residential Tenancy Act* (the “*Act*”) for compensation equivalent to 12 times monthly rent. They also seek the return of their filing fee pursuant to s. 72.

E.H. and V.H. appeared as the Tenants. B.K. appeared as the Landlord.

The parties 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 parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenants advised that their initial evidence and the Notice of Dispute Resolution was served on the Landlord by posting these documents to her door on October 22, 2021. The Tenants provide a proof of service form confirming this. The Landlord acknowledges receipt of the Notice of Dispute Resolution and the Tenants initial evidence and raised no objections with respect to service of these documents. I find that pursuant to s. 71(2) of the *Act* the Landlord was sufficiently served with the Notice of Dispute Resolution and the Tenants’ initial evidence based on its acknowledged receipt by the Landlord without objection.

The Landlord indicates that she served her response evidence on the Tenants by dropping it off at their residence sometime in late May 2022. The Tenants acknowledge receipt of the Landlord’s evidence and raise no objections with respect to service. I find that pursuant to s. 71(2) of the *Act* the Tenants were sufficiently served with the Landlord’s evidence based on its acknowledged receipt by the Tenants without objection.

Preliminary Issue – Service of Late Evidence by the Tenant

The Tenants indicate that they personally served additional evidence on the Landlord on June 8, 2022, which I am told comprises of images related to the listing and sale of the former rental unit. The Tenants indicate that they discovered the rental unit had sold on that date after being advised of such by the sister of the current tenants to the rental unit. The Landlord objects to the late service of evidence.

I am advised by the parties that this matter had been originally scheduled for hearing on June 9, 2022 but was rescheduled to June 20, 2022.

Rule 3.14 of the Rules of Procedure requires applicants to serve all their documentary evidence on the named respondents not less than 14 days before the hearing. In this instance, the Tenants failed to meet this deadline, even after taking the rescheduled hearing into account.

Rule 3.17 of the Rules of Procedure permits the inclusion of evidence served after the deadline imposed by Rule 3.14 if the party arguing its inclusion can show that it is new and relevant evidence and was not available at the time they made their application and served their evidence.

I accept that information related to the purported sale and state of the rental unit may be relevant to the Tenants' application. I accept that the Tenants discovered that the property had been sold on June 8, 2022. During the hearing, the parties confirmed that the property had been sold in May 2022.

I find that the Tenants have established that Rule 3.17 applies under the circumstances. The evidence could not have been served when the application was made as the property only sold in May 2022. Though the Tenants are under a general obligation to take steps to discover evidence relevant to their case, I accept that they only discovered that the house had sold on June 8, 2022. They acted diligently by serving the late evidence as promptly as they could on the Landlord. I note that the Landlord had 12-days to review the additional evidence prior to the participatory on the 20th and could have served response evidence within the service timeframe imposed on respondents by Rule 3.15, which would be 7-days prior to the hearing.

I find that the late evidence was personally served on the Landlord on June 8, 2022 and permit its inclusion pursuant to Rule 3.17.

Issues to be Decided

- 1) Are the Tenants entitled to compensation equivalent to 12 times monthly rent?
- 2) Are the Tenants entitled to the return of their 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 issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on August 1, 2018.
- The Landlord obtained vacant possession of the rental unit on July 31, 2021.
- At the end of the tenancy, rent was due on the first day of the month in the amount of \$1,235.00.

A copy of the written tenancy agreement was put into evidence by the parties.

The Landlord advised that the residential property has two suites, one in the basement and the second being the subject rental unit where the Tenants had resided. The Landlord indicates that she lived in the basement suite. Her written submissions indicate that the basement was used intermittently by the Landlord. The Landlord states in her written submissions that her former primary residence was some distance away from the community and that she would stay in the basement suite as needed and during inclement weather events.

The Landlord advised that her primary residence was sold in June 2021 and that she, her husband, and her daughter needed a place to live. The Landlord indicates that the three moved into the basement suite on June 30, 2021.

The Landlord issued a Two-Month Notice to End Tenancy signed on May 17, 2021 (the "Two-Month Notice"). The Two-Month Notice shows that the Tenants were to vacate the rental unit by August 1, 2021 and that it had been issued on the basis that the Landlord or the Landlord's spouse would occupy the rental unit.

The Tenants acknowledge receiving the Two-Month Notice and, as indicated above, they moved out on July 31, 2021. The Landlord advised that the Tenants did not pay rent for July 2021.

The Landlord advised that she issued the Two-Month Notice on the good faith basis that she and her family intended to live within the rental unit. She indicates that they did do so after the Tenants vacated. The Landlord says she changed her mailing address on her driver's licence, changed over utilities, and set up utilities for the rental unit. A picture of the Landlord's driver's licence and a statement related to internet and television services from July 8, 2021 are put into evidence by the Landlord, both of which show the address for the subject residential property.

The Landlord further that advised that she and her husband purchased another property in the same community, taking possession of it in August 2021. The Tenants provide a copy of the BC assessment for the new property showing the transaction history, with the most recent sale on July 9, 2021. The Landlord's written submissions state the following with respect to the purchase of the new property:

During the time that we were all 3 occupying the house in the one bedroom lower floor and waiting to get into the upper floor, our realtor advised us that there was a house coming for sale in a desirable neighbourhood. Although we had not planned on purchasing a house for the next 6 months to a year, we decided to do a viewing. The house met our needs, and after much discussion of the financial risk of being out of the escalating housing market for up to a year, we elected to purchase the home.

In the Landlord's written submissions, there is mention that the rental unit was in an unclean state after the Tenant's had vacated, that it was not ready to be occupied on August 1, 2021. The Landlord did not state when she or her family moved into the rental unit after the Tenant's vacated it. The Landlord's written submissions indicate that the Landlord and her family did, however, move some of their belongings to the property they had purchased on August 22, 2021. At the hearing, the Landlord confirmed she and her family moved some of their belongings to the new property immediately after it had been purchased.

At the hearing, the Landlord says that the rental unit was painted, drywall work had been undertaken, and the kitchen had been remodelled. The Landlord's written submissions state the following:

We hired a journeyman carpenter/handy man to assist with the repairs. The more he looked into the depth of the issues, the more problems he found with a 50-year-old house. We elected to have some electrical work done. We also elected to replace the original kitchen cabinets, and thus the kitchen flooring, and to drywall over the original tile ceiling due to the stains. The unit was temporarily unlivable, however, we still occupied it, we attended the residence everyday, worked from the unit and maintained it.

The Tenants argued that the Landlord did not occupy the rental unit as per the Two-Month Notice. They advise that they were out for a walk and took notice that the Landlord and her family's vehicles were parked out in front of the new property, which prompted them to investigate their former rental unit. They indicate that in October 2021 they passed the rental unit and say it did not appear that the rental unit was occupied at that time. The Tenants provide photographs, which they say were taken on October 10 and 16. The Landlord argues the photographs are not time stamped.

The Landlord emphasized that she continued to occupy the rental unit until April 2, 2022. She indicates that she resided in both properties during the relevant time, that she was at the rental unit every single day and stayed overnight at the rental unit approximately 3 times per week. The Landlord admits that she did not reside at the rental unit for some weeks in December 2021 and three weeks in January 2022 as that was when the kitchen was remodelled and the drywall was work was being completed. The Landlord further indicates that she and her family were on vacation for two weeks in August 2021 and were not residing at the rental unit at that time.

The Tenants argued that the Landlord rented the basement to a new tenant. The Tenants advance this argument due to their observing another vehicle parked at the property that did not belong to the Landlord or her family. The Landlord denies that the basement suite was rented to another tenant.

The Landlord's evidence includes a series of statements from other individuals. The Landlord did not present these statements at the hearing. Review of their contents indicates these individuals understanding of the circumstances based on their discussions with the Landlord. M.H. provides a statement dated April 15, 2022 and states that the Landlord and her family "were struggling to find an appropriate home to purchase and occupy due to the hot housing market at the time so they decided as

a last resort to move into the upstairs rental unit at unit [ADDRESS] while they searched for and purchased a new home.” I have redacted the rental unit’s address for privacy reasons.

The parties advised that the rental unit was sold in May 2022. The Tenant provides photographs of the rental unit from the listing showing its state at the time of the sale.

Analysis

The Tenants seek compensation under s. 51 of the *Act* equivalent to 12 times their monthly rent.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not 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 provides guidance with respect to compensation claims advanced under s. 51 of the *Act*. It states the following with respect to what is considered a reasonable period:

A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.

A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. For example, if a landlord ends a tenancy on the 31st of the month because the landlord’s close family member intends to

move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.

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. Policy Guideline #2A, citing *Schuld v Niu*, 2019 BCSC 949, indicates that occupation must be for "residential purposes".

Pursuant to s. 51(3) of the *Act*, a landlord may be excused of a compensation claim under s. 51(2) if there are extenuating circumstances which prevent the landlord from carrying out the stated purpose set out under the notice issued under s. 49.

Though this is the Tenants' application, the onus is on the Landlord to prove that the purpose for ending the tenancy was fulfilled within a reasonable period after the effective date of the Two-Month Notice and for at least 6 months. The evidentiary burden is clear based on the wording of s. 51 itself and based on the wording of Policy Guideline #50.

Presently, the Landlord argues that she occupied two properties within the same community. She freely admits that she purchased a new property and that she resided there while also living in the rental unit after the Tenants had vacated it. The Tenants' evidence suggests the sale for the new property was on July 9, 2021 as per the information on BC Assessment. The Landlord indicates that she took occupancy of the new property in August 2021.

Ultimately, there is a credibility issue with respect to the present matter. The Landlord argues, correctly in my view, that there is nothing in the *Act* that would require a landlord to reside primarily at a rental unit or could not maintain multiple residences. However, the Tenants argue that they did not observe the Landlord to reside within the rental unit at all, though their observations appear to be limited to instances in October 2021. The Landlord emphasized that she occupied the rental unit until April 2, 2022.

The primary issue is whether it is credible that the Landlord would reside in two properties within the same community. I accept that it had been her practice to live

within the basement suite at the property as her former home was some distance from the community. The Landlord's written submissions indicate her former home was approximately 50 km from the community. Particularly during inclement weather, it would be reasonable to stay within the basement suite rather than risk traveling on icy roads.

I struggle, however, to follow the Landlord's logic of occupying two residences located in the same community. The community in question is smaller and is a relatively isolated within rural BC. The Landlord provided no reason why she maintained two residences within same small community. It is unclear why the Landlord would occupy the rental unit given the admitted fact that she purchased the new property, took possession of it in August 2021, and moved belongings there on August 22, 2021. I note that the Landlord's written submissions indicate the residential property is over 50-years old. The photographs provided by the Tenant of the Landlord's new residence shows it to be a newer build.

The Landlord's written submissions make reference to their ultimate intention to purchase a new property and that they did not intend to live at the subject rental unit over the long-term. In the portion reproduced above, the Landlord said that she had no plans to purchase a new property for the next 6 months to a year but viewed and purchased the new property after their realtor advised them of it. It would appear that their realtor was aware that they were looking for a new property. This corresponds with the statement from M.H., which indicates that the Landlord and her family found themselves in a bind after selling their former home and "as a last resort" moved in the rental unit. I am left with the unavoidable conclusion that the Landlord sold her former home in the spring of 2021 and she and her family found themselves in difficult circumstances as they had not yet found alternate accommodations.

It appears more likely than not that this is what necessitated the issuance of the Two-Month Notice. Had it been part of the plan to move into the rental unit prior to the sale of the previous property, one would assume the effective date of the Two-Month Notice would have corresponded with when she gave up possession of the previous property to buyer. It did not. I do not believe the Landlord and her family (with their dog) would have moved into a one-bedroom basement suite unless there was an urgent need to do so. Further, the Landlord's realtor was still actively searching for other properties, which is what ultimately resulted in the purchase of their current home. All of this corresponds with the statement from M.H., being that the Landlord and her family were struggling to find an appropriate home given the real estate market.

The Landlord emphasized at the hearing and in her submissions that she occupied the rental unit. However, she was unable to advise when she moved in. The Landlord's evidence indicates that the rental unit was not fit to be occupied immediately and that her and her family were away on vacation for two weeks in August. The Landlord says that she moved some of her belongings into the new property on August 22, 2021. It is unclear when or if the Landlord ever moved into the rental unit after August 1, 2021.

The Landlord provides a picture of her driver's licence and a statement for internet and television services, showing the address for the residential property. This evidence would support residency on the part of the Landlord but does not confirm it. Nor does this evidence confirm when the Landlord moved into the rental unit. Finally, this evidence is extremely limited and is, to an extent, self-generated evidence as it only required the Landlord to file paperwork with ICBC or her internet service provider. It is, therefore, self-serving.

The Landlord advised at the hearing that she stayed overnight at the property for approximately 3 nights a week. However, it should be noted that this is not within the Landlord's written submissions and that evidence was only provided after I prompted her with a question. Further, this is directly contradicted by the Landlord's admissions that she did not stay overnight for some weeks in December 2021 and for 3 weeks in January 2022 due to the ongoing renovations.

When viewed as a whole, I find that the Landlord has failed to show that she occupied the rental unit for residential purposes within a reasonable period and for at least 6 months as required by s. 51 of the *Act*. It is more likely than not that the Landlord no longer needed to reside within the vacant rental unit on August 1, 2022 given the purchase of the new property. It is more likely than not that the Landlord used the vacancy of the rental unit as an opportunity to renovate it for its eventual sale rather than to occupy it for residential purposes as per the Two-Month Notice. One cannot be said to be "occupying" a rental unit for residential purposes if, instead, the rental unit is being renovated. I find it is not credible that the Landlord occupied the rental unit for residential purposes until April 2, 2022 as she had purchased and moved into a new property on August 22, 2021.

Though the Landlord did not argue s. 51(3) applied, I have considered it. Policy Guideline #50 provides guidance that "extenuating circumstances" typically involve the prevention of purpose from being fulfilled due to circumstances that could not be

anticipated or were outside the control of the landlord. Examples include the death of the family member that was to occupy the rental unit or the rental unit had been destroyed by a wildfire. Policy Guideline #50 states these do not include instances in which a landlord ends a tenancy to occupy the rental unit then changes their mind. I find that s. 51(3) does not apply as there was nothing preventing the Landlord from occupying it for residential purposes. Simply put, the Landlord and her family found their next home and moved into it on August 22, 2021.

As I have found that the Landlord failed to establish that she did not occupy the rental unit for at least 6 months, I find that the Tenants are entitled to compensation pursuant to s. 51(2) in the amount of \$14,820.00 (\$1,235.00 x 12).

Conclusion

The Landlord has failed to show that she occupied the rental unit for residential purposes for at least 6 months. The Tenants are entitled to compensation under s. 51(2) of the *Act* in the amount of \$14,820.00 (\$1,235.00 x 12).

I find that they are entitled to the return of the filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenants' \$100.00 filing fee.

I make a total monetary order pursuant to ss. 51, 72, and 67 of the *Act* and order that the Landlord pay **\$14,920.00** (\$14,820.00 + \$100.00) to the Tenants.

It is the Tenants' obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenants 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: June 22, 2022

Residential Tenancy Branch